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Attorneys for Defendants
MICHAEL P. McGRATH
and ALL RISKS, LTD.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT

CRUMP INSURANCE SERVICES, INC.,

Plaintiff,

vs.

MICHAEL P. McGRATH, an individual,
ALL RISKS, LTD., a corporation, and
Does 1 through 50, inclusive,

Defendant.

Case No. C-07-4636 MMC

DECLARATION OF KRISTEN L. WILLIAMS IN SUPPORT OF DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL ALL RISKS, LTD. TO RESPOND TO REQUESTS FOR PRODUCTION NOS. 13-17; (3) ALL RISKS TO PRODUCE ALL DOCUMENTS RESPONSIVE TO CRUMPS REQUEST FOR PRODUCTION, SET TWO, NOS. 36-37; (4) MCGRATH TO ANSWER DEPOSITION QUESTIONS REGARDING HIS COMPENSATION AT ALL RISKS; (5) MCGRATH AND ALL RISKS TO PRODUCE ANY DOCUMENTS WITHHELD ON THE GROUNDS OF PRIVACY OR ATTORNEY-CLIENT PRIVILEGE; AND (6) MCGRATH, MARTY, AND CORTEZI TO ANSWER QUESTIONS AT FURTHER DEPOSITIONS REGARDING THE DOCUMENTS AND INFORMATION

Date: August 6, 2008

Time: 9:30 a.m.

Magistrate Judge James Larson

Courtroom: F

1 I, Kristen L. Williams, declare as follows:

2 1. I am an attorney at law duly licensed to practice law before all courts of the State
3 of California. I am an associate in the law offices of Curiale Dellaverson Hirschfeld & Kraemer,
4 LLP, attorneys of record for attorneys of record for Defendants Michael McGrath and All Risks,
5 Ltd. in this action. I have personal knowledge of the facts stated herein and could testify
6 competently to them if called upon to do so.

7 2. Plaintiff Crump filed suit against both McGrath and All Risks on August 31,
8 2007, claiming that, upon his resignation, Defendant Michael McGrath (1) breached the terms of
9 a 1996 Memorandum of Understanding with Crump and (2) breached his fiduciary duty to
10 Crump. Crump also alleges that both McGrath and Defendant All Risks (1) misappropriated
11 trade secrets; (2) intentionally interfered with its prospective advantage with regard to its clients;
12 (3) negligently interfered with its prospective advantage with regard to its clients; (4)
13 intentionally interfered with its prospective advantage with regard to its employees; and (5)
14 negligently interfered with its prospective advantage with regard to its employees. Attached as
15 Exhibit A is a true and correct copy of Plaintiff's Complaint.

16 3. On January 3, 2008, Plaintiff propounded Request for Production of Documents
17 on Defendant All Risks. (Williams Decl. ¶3 and Exhibit B.) Defendant All Risks responded to
18 these on February 13, 2008. (Williams Decl. ¶3 and Exhibit C.)

19 4. On February 29, 2008 – more than four months ago – Plaintiff's counsel, Fulbright
20 and Jaworski, sent Defendant a letter requesting to meet and confer with regard to various
21 responses by Defendant All Risks. (Williams Decl. ¶4 and Exhibit D.)

22 5. On March 19, 2008, counsel for Plaintiff and Defendant engaged in a lengthy
23 teleconference regarding Defendant's Responses to Request for Production of Documents,
24 including all Requests that are at issue in this Motion. Defendants All Risks and McGrath
25 articulated their respective positions with regard to these requests, as articulated below for the
26 Court, and did not agree to produce any additional documents. Crump did not challenge All
27 Risks or McGrath and no further communications were had regarding All Risk's Responses to
28 Requests for Production Nos. 8-12 and McGrath's Responses to Request for Production Nos. 13-

1 17.

2 6. Plaintiff's own employees, however, have testified that most retailers would
3 generally provide "submissions" to the broker providing information such as policy expiration
4 dates, premiums, terms and conditions of the policy and financial information. Attached as
5 Exhibit E is a true and correct copy of pertinent portions of Rick McDonough's deposition taken
6 on June 20, 2008. Attached as Exhibit F is a true and correct copy of pertinent portions of Peter
7 Scott's deposition taken on April 4, 2008.

8 7. On May 13, 2008, Plaintiff propounded Requests for Production, Set Two on
9 Defendant All Risks, including Requests for Production Nos. 36 and 37 which seek all
10 communications between McGrath and two retailers. Defendant All Risks responded to these
11 requests on June 12, 2008. Attached as Exhibit G is a true and correct copy of Plaintiff's Request
12 for Production to All Risks, Set Two. Attached as Exhibit H is a true and correct copy of
13 Defendant All Risks' Responses to Plaintiff's Request for Production to All Risks, Set Two.

14 8. On June 20, 2008, Plaintiff's initiated meet and confer efforts with Defendant with
15 regard to Defendant's Responses to Request for Production Nos. 36 and 37. Attached as Exhibit
16 I is a true and correct copy of Plaintiff's letter of June 20, 2008.

17 9. Defendant responded on June 23, 2008. Plaintiff did not challenge this response.
18 Attached as Exhibit J is a true and correct copy of Defendant's letter of June 23, 2008.

19 10. Plaintiff deposed McGrath on April 30, 2008. Plaintiff was asked about his
20 compensation and was instructed not to answer based on his right of privacy. Plaintiff did not
21 move to compel on answer following the deposition.

22 11. On June 2, 2008, Plaintiff's counsel spoke with Defendants' counsel and it was
23 agreed that the second day of McGrath's deposition would go forward on June 10. An amended
24 notice of deposition was sent on June 6, 2008, confirming the June 10th date. Plaintiff did not
25 make any attempt to meet and confer with regard to testimony regarding compensation
26 information in conjunction with scheduling the continued deposition or serving the amended
27 deposition notice.

28 12. Plaintiff substituted counsel on June 6, 2008 and is currently being represented by

1 the law offices of Jackson Lewis, LLP. Likewise, Plaintiff's new counsel did not make any
2 attempt to meet and confer with regard to testimony regarding compensation information prior to
3 McGrath's continued deposition.

4 13. Plaintiff did not bring any Motion before this Court regarding this testimony until
5 the present Motion – filed nearly two months after the date McGrath was instructed not to answer
6 questions related to compensation.

7 14. On June 17, 2008, during the deposition of former Crump president Glenn
8 Hargrove, the deponent was asked general information regarding the compensation of a current
9 employee of Plaintiff who was in a similar position as Defendant McGrath. Specifically, the
10 deponent was instructed that Defendant was "not asking you for a dollar amount" but only wanted
11 to know whether his compensation was based on what revenue he generated during his first year
12 of employment with Plaintiff. Plaintiff's counsel objected to the question on the bases of
13 "confidential proprietary trade secret information" and "privacy." Attached as Exhibit K is a true
14 and correct copy of the deposition of Glenn Hargrove taken in June 17, 2008.

15 15. Seven days later Plaintiff filed this Motion.

16 16. On June 18, 2008, Plaintiff filed a Motion To Compel Responses to All Risks'
17 Requests for Production. Part of this Motion is the request for documents that are presently
18 redacted as to compensation information as to McGrath to be unredacted and that McGrath be
19 required to be deposed further as to these documents. This Motion is currently pending before
20 this Court.

21 17. Documents in response to Plaintiff's Request for Production, Set One to All Risks
22 and McGrath were originally produced to Plaintiff on March 25, 2008. Until on or about June 10,
23 2008, Plaintiff never requested a log of documents withheld based on privacy. Defendants agreed
24 to produce the log and also informed Plaintiff that the category of documents withheld based on
25 privacy was documents related to compensation agreements. Nonetheless, on June 24, 2008,
26 Plaintiff filed this instant Motion. Defendants are producing the log related to privacy with its
27 Opposition to this Motion. Attached as Exhibit L is a true and correct copy of Defendants'
28 Privacy Log.

20. Despite having already met and conferred with regard to many of these responses months previously, Defendant nonetheless once again met and conferred with Plaintiff.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 16th day of July, 2008, in San Francisco, California.

Kristen L. Williams
Kristen L. Williams

EXHIBIT A

ENDORSED
FILED
San Francisco County Superior Court

AUG 31 2007

GORDON PARKER Clerk
JUN P. LANELO

FULBRIGHT & JAWORSKI L.L.P.
DOUGLAS W. STERN (BAR NO. 82973)
555 South Flower Street
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CASE MANAGEMENT CONFERENCE SET

Attorneys for Plaintiff CRUMP INSURANCE
SERVICES, INC. a Texas Corporation

FEB 01 2008 -9⁰⁰AM

DEPARTMENT 212

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

CRUMP INSURANCE SERVICES, INC. a
Texas Corporation,

Plaintiff,

v.

MICHAEL P. MCGRATH, an individual, ALL
RISKS, LTD. a corporation, and Does 1 through
50, inclusive,

Defendants.

Case No. **C6C-07-466804**

[Unlimited Civil Complaint]

Assigned For All Purposes To The
Honorable

COMPLAINT FOR DAMAGES FOR:

- (1) BREACH OF CONTRACT;
- (2) MISAPPROPRIATION OF
TRADE SECRETS;
- (3) BREACH OF FIDUCIARY
DUTY;
- (4) INTENTIONAL
INTERFERENCE WITH
PROSPECTIVE ECONOMIC
ADVANTAGE (CLIENTS);
- (5) NEGLIGENT INTERFERENCE
WITH PROSPECTIVE ECONOMIC
ADVANTAGE (CLIENT);
- (6) INTENTIONAL
INTERFERENCE WITH
PROSPECTIVE ADVANTAGE
(EMPLOYEES);
- (7) NEGLIGENT INTERFERENCE
WITH PROSPECTIVE ECONOMIC
ADVANTAGE (EMPLOYEES)

1 Plaintiff Crump Insurance Services, Inc., as successor to Crump E&S of San Francisco
2 Insurance Services, Inc. alleges as follows:

3 I.

4 THE PARTIES

5 1. Plaintiff Crump Insurance Services, Inc. ("Crump") is a corporation organized and
6 existing under the laws of the State of Texas, with its principle place of business located in
7 Dallas, Texas. Crump is the successor in interest to Crump E&S of San Francisco Insurance
8 Services, Inc. Plaintiff is engaged as an intermediary in the business of providing insurance to
9 customers.

10 2. At all times material hereto Plaintiff was qualified to do business in the State of
11 California.

12 3. Defendant Michael P. McGrath ("McGrath") is an individual residing in the State
13 of California, City of Novato.

14 4. Plaintiff is informed and believes, and on that basis alleges that Defendant All
15 Risks, Ltd. ("All Risks") is a corporation believed to exist under the laws of the State of
16 Maryland, with its principal place of business located in Hunt Valley, Maryland. Defendant All
17 Risks is a competitor of Plaintiff in the insurance business.

18 5. Plaintiff is ignorant of the true names and capacities of those individuals and
19 entities sued herein as Doe Defendants 1 through 50, inclusive. Plaintiff will amend this
20 Complaint to set forth their true names and capacities at such time as they are ascertained.

21 6. Plaintiff is informed and believes, and on that basis alleges that those defendants
22 sued herein as Does 1 through 50, inclusive, participated in the wrongs alleged herein, in various
23 capacities and are liable to Plaintiff for the claims asserted herein.

24 II.

25 BACKGROUND FACTS

26 7. On or about June 7, 1996, Defendant Michael P. McGrath entered into a written
27 contract titled "Memorandum of Agreement" with Crump E&S of San Francisco Insurance
28 Services, Inc. Plaintiff Crump Insurance Services, Inc. is the successor in interest to Crump E&S

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1 of San Francisco Insurance Services, Inc. A true and correct copy of the Memorandum of
2 Agreement is attached hereto as Exhibit 1.

3 8. Since the original Memorandum of Agreement was entered into in 1996, the
4 parties thereto have executed extensions of the Memorandum of Agreement. On or about April
5 30, 2007, Plaintiff and McGrath executed the "Broker Compensation Agreement." The Broker
6 Compensation Agreement, effective January 1, 2007, extended the terms of the Memorandum of
7 Agreement.

8 9. Pursuant to the June 7, 1996 Memorandum of Agreement, McGrath agreed to a
9 number of terms which he has violated as alleged more particularly below.

10 10. Pursuant to paragraph 10 of the June 7, 1996 Memorandum of Agreement,
11 McGrath agreed that in the course of his employment, he would obtain confidential information
12 belonging to Crump. This information would relate to the persons, firms, and corporations which
13 were, or would become, customers of Crump. Such confidential information would include, but
14 not be limited to, the names of customers, policy expirations dates, policy terms, conditions and
15 rates, and familiarity with customers' risks. Defendant McGrath agreed that he would not
16 disclose or make use of such confidential information, except as was required in the course of his
17 employment. He further agreed that upon termination of his employment, and for a period of one
18 year thereafter, he would not disclose or make use of such confidential information without the
19 prior written consent of Crump.

20 11. Pursuant to paragraph 11 the June 7, 1996 of the Memorandum of Agreement,
21 McGrath agreed that all records, files, manuals, lists of customers, blanks, forms, materials,
22 supplies, computer programs and other materials furnished to him by Crump would remain the
23 property of Crump. He further acknowledged that this property was confidential and not readily
24 accessible to Crump's competitors. Upon termination of the employment relationship, McGrath
25 agreed that he would immediately deliver to Crump or its authorized representatives all such
26 property, including copies.

27 12. Pursuant to paragraph 13 of the Memorandum of Agreement, McGrath agreed that
28 so long as he working for Crump, he would not engage in business activities competitive with the

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1 work he performed for Crump.

2 13. McGrath further agreed pursuant to paragraph 14 of the Memorandum of
3 Agreement, that he would not solicit employees of Crump for any other competitive company.

4 14. McGrath also agreed pursuant to paragraph 16 of the Memorandum of Agreement
5 that he would provide 15 days prior written notice to Crump should he wish to terminate his
6 position as an employee of Crump.

7 15. At some time prior to June 3, 2007, McGrath negotiated with Defendant All Risks
8 to cease being an employee of Plaintiff Crump and instead to become an employee of All Risks.
9 At some time prior to June 3, 2007, McGrath decided that he would terminate his employment
10 with Crump and begin employment with All Risks.

11 16. Prior to June 3, 2007, Defendant McGrath decided that he would take advantage of
12 the proprietary information of Crump and use such information to the advantage of himself and
13 his new employer, All Risks.

14 17. On or about May 31, 2007, after having decided that he would be leaving Plaintiff
15 Crump, and that he would be working for Defendant All Risks, Defendant McGrath, in violation
16 of the terms of this contract, and his obligations to Plaintiff, obtained information from Plaintiff
17 on expiration dates of policies, commissions, and customer renewal information. This
18 information was proprietary and confidential and of significant economic value to Plaintiff, and
19 would similarly have significant economic value to Defendant All Risks.

20 18. On or about June 3, 2007, without complying with the minimum 15 days written
21 notice provision set forth in the Memorandum of Agreement, paragraph 16, McGrath abruptly
22 notified Crump that he was terminating his employment with Crump and immediately
23 commencing employment with a competitor, Defendant All Risks.

24 19. Since June 4, 2007, Defendant McGrath has been an employee of Defendant All
25 Risk and has engaged in the conduct alleged herein below.

III.

FIRST CAUSE OF ACTION

[Breach of Contract – Against Defendant McGrath]

20. Crump incorporates by reference herein the allegations of paragraph 1 through 19 above.

21. Pursuant to the express terms of the June 7, 1996 Memorandum of Agreement, as renewed at various times through and including January 1, 2007, McGrath had agreed to those express obligations noted above in paragraphs 10 through 14 with respect to the utilization of confidential information belonging to Crump.

22. Plaintiff is informed and believes, and on that basis alleges that McGrath breached a number of provisions of the June 7, 1996 Memorandum of Agreement, including but not limited to paragraph 10, paragraph 11, paragraph 13, paragraph 14, and paragraph 16 thereof.

23. In particular, McGrath improperly and unlawfully misappropriated and used confidential information belonging to Crump. Plaintiff is informed and believes, and on that basis alleges that that this information included the identity of persons, firms and corporations which had become customers or accounts of Crump.

24. Plaintiff is informed and believes, and on that basis alleges that that the information used by McGrath also included the source with which the insurance was placed, as well as the names of customers, policy expiration dates, policy terms, conditions and rates and familiarity with the customers' risk, all of which were agreed constituted confidential information belonging to Crump.

25. At no time did Crump give its written consent to McGrath to utilize any of the confidential information.

26. Plaintiff is informed and believes, and on that basis alleges that McGrath disclosed to his new employer, All Risks, the confidential information which belonged to Crump.

27. McGrath breached the June 7, 1996 Memorandum of Agreement in that he improperly and unlawfully took for his own use, and the use of his new employer, All Risks, records, files and lists as well as other materials which had been furnished to him as a Crump

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1 employee. Plaintiff is informed and believes, and on that basis alleges that that such information
2 included confidential information belonging to Crump.

3 28. Plaintiff is informed and believes, and on that basis alleges that Defendant
4 McGrath obtained and has used electronic versions of confidential information of Crump.

5 29. Plaintiff is informed and believes, and on that basis alleges that while still under
6 the employ of Crump, Defendant McGrath engaged in business activities which were competitive
7 with the work he performed at Crump, in violation of his obligations to Crump.

8 30. Plaintiff is informed and believes, and on that basis alleges that while still an
9 employee of Crump, Defendant solicited Crump employees to cease their employment with
10 Crump, and instead commence employment with McGrath's new employer, All Risks.

11 31. Notwithstanding the fact that McGrath had agreed that he would provide 15 days
12 prior written notice to Crump should he wish to terminate the June 7, 1996 Memorandum of
13 Agreement, Crump breached such provision and failed to provide timely written notice of his
14 intent to terminate the relationship.

15 32. Plaintiff has performed each and every obligation imposed on it by the contract of
16 the parties in accordance with the terms thereof, except to the extent that such performance was
17 excused or prevented by the acts of defendant.

18 33. Plaintiff has been damaged by the various breaches of contract of McGrath in an
19 amount which has not yet been ascertained. Plaintiff will seek leave of this Court to state the
20 amount of its damages at such time as they are ascertained.

21 IV.

22 SECOND CAUSE OF ACTION

23 [Misappropriation Of Trade Secrets –

24 Against Defendants McGrath, All Risks and Does 1-50.]

25 34. Plaintiff incorporates herein by reference the allegations in paragraphs 1 through
26 33 above.

27 35. During the course of his employment, Defendant McGrath had access to, and was
28 provided various trade secrets which belonged to Plaintiff. These include, *inter alia*, client lists,

1 expiration lists, underlying client information, and information regarding co-employees.

2 36. The information provided to Defendant McGrath was provided to him so that he
3 could perform his duties and obligations as an employee of Plaintiff. The information made
4 known to Defendant McGrath constituted trade secrets within the meaning of California Civil
5 Code Section 3426 *et seq.*

6 37. The information made known to Defendant McGrath had independent economic
7 value and was not generally known to the public or to other persons who could obtain economic
8 value from its disclosure or use.

9 38. At all times material hereto, Plaintiff took reasonable and appropriate efforts to
10 maintain the secrecy of its trade secrets.

11 39. Plaintiff is informed and believes, and on that basis alleges Defendants McGrath,
12 All Risks and Does 1-50 made use of the trade secrets of Plaintiff. Further, Defendants All Risks
13 and Does 1-50 obtained economic benefit by the use of the Plaintiff's trade secret.

14 40. Defendants have been unjustly enriched in that they have obtained the economic
15 value of the trade secrets of Plaintiff.

16 41. Plaintiff is informed and believes, and on that basis alleges that Defendants actions
17 were willful and malicious in misappropriating the trade secrets of Plaintiff, such that exemplary
18 damages may be awarded pursuant to Civil Code Section 3426.3.

19 42. Plaintiff has been damaged in an amount which is not presently known to Plaintiff.
20 Plaintiff will amend this Complaint to set forth the amount of damages it sustained at such time as
21 that amount is ascertained.

22 V.

23 **THIRD CAUSE OF ACTION**

24 **[Breach Of Fiduciary Duty – Against Defendant McGrath]**

25 43. Plaintiff incorporates herein by reference the allegations in paragraphs 1 through
26 42 above.

27 44. Defendant McGrath was a fiduciary of Plaintiff as a result of the position he held
28 and with respect to the information provided to him such as client lists, expiration lists,

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underlying client information, and information relating to employees of Plaintiff.

45. Defendant McGrath was obligated as a fiduciary to make use of the information provided to him solely in performing his obligation to Plaintiff.

46. Defendant McGrath breached his fiduciary duty to Plaintiff by, *inter alia*, supplying to a competitor, All Risks, the information identified hereinabove, and making use of that information to obtain from All Risk the benefits of that information and the business it generated.

47. Defendant McGrath breached his fiduciary duty to Plaintiff by using the information relating to employees of Plaintiff in order to solicit such employees to leave Plaintiff Crump and to join Defendant All Risks.

48. As a result of the breach of fiduciary duty, Plaintiff has been damaged in an amount not yet ascertained. Plaintiff will amend this Complaint to set forth such amount when the amount has been ascertained.

49. The conduct of Defendant McGrath was undertaken with malice and oppression with the desire to harm Plaintiff such that Plaintiff is entitled to the award of punitive damages from Defendant McGrath.

VI.

FOURTH CAUSE OF ACTION

[Intentional Interference With Prospective Economic Advantage (Clients) – Against Defendants McGrath and All Risks and Does 1-50]

50. Plaintiff incorporates herein by reference the allegations in paragraphs 1 through 49 above.

51. Plaintiff has a prospective economic advantage with respect to those of its customer known to McGrath, to whom Plaintiff had provided insurance services.

52. Plaintiff is informed and believes, and on that basis alleges that Defendant All Risks and Does 1-50 were aware of the fact that Plaintiff had a continuing prospective economic advantage with respect to Plaintiff's clients who were known to Defendant McGrath. This prospective economic advantage was derived from, in part, the confidential information of

1 Crump.

2 53. Plaintiff had a reasonable expectation and likelihood that it would continue to
3 obtain the economic advantage arising from its preexisting relationships between Plaintiff and its
4 clients who were serviced or otherwise known to Defendant McGrath. Absent the conduct of
5 Defendants alleged herein, the economic relationship would have continued.

6 54. Plaintiff is informed and believes, and on that basis alleges that Defendant All
7 Risks and Does 1-50 intended to interfere with that prospective economic advantage and did so
8 by making use of the confidential information provided to it by Defendant McGrath.

9 55. The actions of Defendants actually caused the disruption of the economic
10 relationship between Plaintiff and some of its customers who were known to Defendant McGrath.

11 56. As a result of that conduct, Plaintiff has been damaged in an amount not yet
12 ascertained. Plaintiff will seek leave to amend this Complaint at such time as the amount of
13 damages are ascertained.

14 57. The conduct of Defendant All Risks and Does 1-50 was undertaken with malice
15 and oppression with the desire to harm Plaintiff such that Plaintiff is entitled to the award of
16 punitive damages from Defendant All Risks.

17 VII.

18 FIFTH CAUSE OF ACTION

19 [Negligent Interference With Prospective Economic Advantage (Clients) – Against 20 Defendants McGrath and All Risks and Does 1-50]

21 58. Plaintiff incorporates herein by reference the allegations in paragraphs 1 through
22 49 above.

23 59. Plaintiff has a prospective economic advantage with respect to those of its
24 customer known to McGrath, to whom Plaintiff had provided insurance services.

25 60. Plaintiff is informed and believes, and on that basis alleges that Defendant All
26 Risks and Does 1-50 were aware of the fact that Plaintiff had a continuing prospective economic
27 advantage with respect to Plaintiff's clients who were known to Defendant McGrath. This
28 prospective economic advantage was derived from, in part, the confidential information of

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1 Crump.

2 61. Plaintiff had a reasonable expectation and likelihood that it would continue to
3 obtain the economic advantage arising from its preexisting relationships between Plaintiff and its
4 clients who were serviced or otherwise known to Defendant McGrath. Absent the conduct of
5 Defendants alleged herein, the economic relationship would have continued.

6 62. Plaintiff is informed and believes, and on that basis alleges that Defendant All
7 Risks and Does 1-50 knew that if they did not act with reasonable care, their conduct would
8 interfere with the prospective economic advantage.

9 63. Defendants did not act with due care, but instead acted negligently in that they did
10 not take appropriate steps to insure that Defendant McGrath did not misuse the proprietary
11 information of Crump by McGrath.

12 64. The actions of Defendants actually caused the disruption of the economic
13 relationship between Plaintiff and some of its customers who were known to Defendant McGrath.

14 65. As a result of that conduct, Plaintiff has been damaged in an amount not yet
15 ascertained. Plaintiff will seek leave to amend this Complaint at such time as the amount of
16 damages are ascertained.

17 **VIII.**

18 **SIXTH CAUSE OF ACTION**

19 **[Intentional Interference With Prospective Economic Advantage (Employees) – Against**
20 **Defendants McGrath and All Risks and Does 1-50]**

21 66. Plaintiff incorporates herein by reference the allegations in paragraphs 1 through
22 49 above.

23 67. Plaintiff is informed and believes, and on that basis alleges that Defendant All
24 Risks and Does 1-50 were aware of the fact that Plaintiff had a continuing prospective economic
25 advantage with respect to its employees who were known to Defendant McGrath.

26 68. Plaintiff had a reasonable expectation and likelihood that it would continue to
27 obtain the economic benefits provided by those employees, arising from its preexisting
28 employment relationships.

69. Plaintiff is informed and believes, and on that basis alleges that Defendant All Risks and Does 1-50 intended to interfere with that prospective economic relationship existing with Plaintiff's employees, and did so by making use of the confidential information provided to it by Defendant McGrath with regard to such employees.

70. Plaintiff is informed and believes, and on that basis alleges that as a result of the actions of Defendants, the employees were induced to terminate their employment with Plaintiff and commence employment with Defendant All Risks.

71. As a result of that conduct, Plaintiff has been damaged in an amount not yet ascertained. Plaintiff will seek leave to amend this Complaint at such time as the amount of damages are ascertained.

72. The conduct of Defendant All Risks and Does 1-50 was undertaken with malice and oppression with the desire to harm Plaintiff such that Plaintiff is entitled to the award of punitive damages from Defendant All Risks.

IX.

SEVENTH CAUSE OF ACTION

[Negligent Interference With Prospective Economic Advantage (Employees) – Against Defendants McGrath and All Risks and Does 1-50]

73. Plaintiff incorporates herein by reference the allegations in paragraphs 1 through 49 above.

74. Plaintiff is informed and believes, and on that basis alleges that Defendant All Risks and Does 1-50 were aware of the fact that Plaintiff had a continuing prospective economic advantage with respect to its employees who were known to Defendant McGrath.

75. Plaintiff had a reasonable expectation and likelihood that it would continue to obtain the economic benefits provided by those employees, arising from its preexisting employment relationships.

76. Plaintiff is informed and believes, and on that basis alleges that Defendant All Risks and Does 1-50 knew that if they did not exercise due care, that their conduct would interfere with that prospective economic relationship existing with Plaintiff's employees,

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1 77. Defendants acted negligently in that they did not take appropriate steps to insure
2 that no improper use of Plaintiff's proprietary information about its employees was use in order to
3 seek to induce such employees to terminate their relationship with Plaintiff. Instead, confidential
4 information provided to Defendant All Risks by Defendant McGrath with regard to such
5 employees was used.

6 78. Plaintiff is informed and believes, and on that basis alleges that as a result of the
7 actions of Defendants, the employees were induced to terminate their employment with Plaintiff
8 and commence employment with Defendant All Risks.

9 79. As a result of that conduct, Plaintiff has been damaged in an amount not yet
10 ascertained. Plaintiff will seek leave to amend this Complaint at such time as the amount of
11 damages are ascertained.

12 WHEREFORE, Plaintiff prays for judgment as follows:

- 13 1. For damages according to proof;
14 2. For punitive damages;
15 3. For appropriate injunctive relief preventing the use by Defendants of Plaintiffs
16 proprietary information;
17 4. For costs of suit herein;
18 5. For such other and further relief as the Court deems just and proper.

19 Dated: August 30, 2007

FULBRIGHT & JAWORSKI L.L.P.
DOUGLAS W. STERN

20
21
22 By 

23 DOUGLAS W. STERN
24 Attorneys for Plaintiff CRUMP INSURANCE
25 SERVICES, INC.
26
27
28

EXHIBIT 1

MEMORANDUM OF AGREEMENT

MEMORANDUM OF AGREEMENT dated June 7, 1996 between Crump E&S of San Francisco Insurance Services, Inc., a California Corporation (hereinafter "Crump"), and Michael P. McGrath (hereinafter "Employee").

INTRODUCTION

This Agreement is intended to set forth the terms and conditions of the employment relationship between Crump and Employee. This relationship is based on the agreement and understanding of the parties that Crump is the owner of the Crump Business relating to Crump Customers as these terms are used below, and that these customers comprise a substantial part of the goodwill of Crump. To protect the business and goodwill of Crump and the confidential information belonging to Crump, the parties have agreed to certain limitations on competition and disclosure of confidential information following termination of employment. Such limitations relate solely to Crump Business and Crump Customers, however, and are intended to permit Employee to remain in the insurance and brokerage business, if he so desires.

AGREEMENTS

Crump and Employee agree as follows:

1. **EMPLOYMENT COMPENSATION** - Crump agrees to employ Employee to solicit, place, and service property or casualty business, during the term of the Agreement and to pay Employee a base salary of \$125,000 per year, with future adjustments in accordance with Crump base salary guidelines. Base salary shall be payable in accordance with Crump regular payroll procedures, and may be changed only by written agreement of the parties.
2. **PERFORMANCE BY EMPLOYEE** - Employee agrees to devote his entire business time and effort to furtherance of the business of Crump and to perform faithfully to the best of his ability all assignments of work given to him by Crump.
3. **TERM** - The term of this Agreement shall commence as of the date of this Agreement and shall continue through December 31, 1997, at which time this Agreement will be extended automatically to June 30, 1999, if the combined Net Retained Revenue of Robert Lindner, Employee, and Paul Farbstein ("the Team") exceeds \$1,500,000 for the time period July 1, 1996, through December 31, 1997. "Net Retained Revenue" shall be defined as brokerage actually received by Crump, less any return brokerage. This Agreement is at all times subject to earlier termination in accordance with paragraph 7 below.

4. **BONUS -**

a. **Signing Bonus.** Employee shall receive a one-time signing bonus of \$75,000, payable with the first payroll check to be received by Employee. This signing bonus shall be subject to repayment on a pro-rata basis should Employee leave the employment of Crump at his own election, or for any circumstance outlined in paragraph 7 below, prior to July 1, 1999.

b. **Annual Bonus.** Employee shall participate in an annual bonus pool based on the Net Retained Revenue credited to the Team Employee's share of this annual bonus pool shall be determined each year by, and at the discretion of, Employee's immediate supervisor.

5. **BENEFITS -** Employee shall be eligible to participate at the level of Vice President in any benefit plans and programs in effect from time to time and as amended by Crump, including annual leave entitlement established by Crump, including three weeks vacation which may be carried over from year to year.

6. **EXPENSES -** Employee will receive reimbursement for all ordinary and necessary business expenses in accordance with Crump's management guide. Employee shall receive an annual automobile allowance of \$6,000, payable in equal semi-monthly installments with the Employee's regular payroll check, and shall also be reimbursed for office parking fees.

7. **TERMINATION -** The term of this Agreement shall be as stated in Paragraph 3. Term, unless terminated by:

a. Employee's death or disability (disability, for the purpose of this Agreement, means the inability of Employee due to illness, accident or other physical or mental incapacity, to perform the duties and services provided for hereunder) for a period of ninety (90) consecutive days; or

b. Discharge of Employee for cause, which, as used herein, shall mean if Employee: (i) violates any provision of this Agreement; (ii) performs any act which in the judgment of the Crump causes or has the potential to cause harm, injury or damage of any sort to Crump; or (iii) refuses or fails to carry out a resolution of the Board of Directors of Crump, other than for reasons of death or disability as previously described; or

c. Conviction of Employee of a misdemeanor or felony; or

d. Dereliction of duty, evidenced by an unexplained or unexcused failure of Employee to attend work for a period of ten (10) consecutive work days.

In the event of termination of this Agreement for any of the reasons set forth in this Paragraph 7, Crump shall be responsible to pay or to provide Employee (or the Employee's lawfully designated beneficiary or to Employee's estate in the event of death) only those portions of any compensation, and/or other benefits due up to and including the effective date of termination of the Agreement, except for those benefits which survive termination pursuant to law.

Regardless of the reason, cause or occasion for termination, the provisions of Paragraph 8, 10, 11, 12, 13, and 14 shall survive the termination of employment and shall be and remain valid, binding and enforceable after termination.

8. **CRUMP BUSINESS** - All business and fees including insurance, bond, risk management, self-insurance and other services (collectively, the "Crump Business"), produced or transacted through the efforts of Employee shall be the sole property of Crump Group, Inc. (Crump Group, Inc. and its subsidiary corporations and departments, are herein referred to as "Crump Group"). Employee shall have no right to share in any commission or fee resulting from the conduct of such business other than as compensation referred to in paragraphs 1 and 4.

9. **PREMIUMS AND COLLECTIONS** - Premiums, commissions or fees on the Crump Group Business produced or transacted through the efforts of Employee shall be invoiced to the customer or account by one of the subsidiaries of Crump Group. All checks or bank drafts received by Employee from any customer or account shall be made payable to such company, and all premium, commissions or fees shall be collected by Employee in the name of and on behalf of such company.

10. **CONFIDENTIAL INFORMATION** - Employee acknowledges that, in the course of and as a result of his employment hereunder, he will become acquainted with confidential information belonging to Crump Group. This information relates to persons, firms, and corporations which are or become customers or accounts of Crump Group during the term of the Agreement ("Crump Customers"), and sources with which insurance is placed, including but not limited to, the names of customers, policy expiration dates, policy terms, conditions, and rates, familiarity with customer's risks. Employee agrees that during his employment hereunder he will not, without the written consent of Crump, disclose or make any use of such confidential information except as may be required in the course of his employment hereunder. Employee further agrees that upon termination hereunder, and for a period of one year thereafter, he will not disclose or make any use of such confidential information without the prior written consent of Crump.

11. **PROTECTION OF CRUMP PROPERTY** - All records, files, manuals, lists of customers, blanks, forms materials, supplies, computer programs, and other materials furnished to the Employee by Crump Group shall be and remain the property of Crump Group. Employee shall be deemed the bailee thereof for the use and benefit of Crump and shall safely keep and preserve such property, except as consumed in the normal business operation of Crump Group. Employee acknowledges that this property is confidential and is not readily accessible to Crump's competitors. Upon termination of employment hereunder, the Employee shall immediately deliver to Crump or its authorized representative all such property, including all copies, remaining in the Employee's possession or control.

12. **NONCOMPETITION FOR CERTAIN CRUMP CUSTOMERS** - Upon termination of Employee's employment hereunder, Employee agrees that for a period of two years following such termination he will not, without the written consent of Crump, directly or indirectly, solicit insurance wholesale brokerage business for any Account, either personally or in collaboration with others. As used in this Paragraph 12, "Account" shall refer to those insurance or policies that were either: (i) carried on the books of Crump or any subsidiary of Crump Group at any time during the twelve-month period prior to Employee's termination and with respect to which Employee personally performed service or employment duties during the twelve-month period prior to Employee's termination; or (ii) those potential accounts of Crump or any subsidiary of Crump Group, with regard to which Employee personally worked to obtain, secure or develop during the twelve-month period prior to Employee's termination. As used in this Paragraph 12, "insurance wholesale brokerage business", is limited to the lines of insurance coverage and other services that: (i) Crump or any subsidiary of Crump Group placed or provided for such Account during the twelve-month period prior to Employee's termination or (ii) with regard to which Employee had personally done any work during the twelve-month period prior to Employee's termination in connection with any attempt or anticipated attempt by Crump or any subsidiary of Crump Group to provide or place.

13. **ORGANIZING COMPETITIVE BUSINESSES** - Employee agrees that so long as he is working for Crump he will not engage in business activity competitive with work he performs for Crump.

14. **SOLICITING COMPANY EMPLOYEES** - Employee agrees that he will not, for a period of one year following termination of employment with Crump, solicit any of Crump Group employees to work for any other competitive company.

15. **ENTIRE AGREEMENT, SEVERABILITY** - This Agreement sets forth the entire agreement between the Employee and Crump, and supersedes any and all prior agreements and understandings with respect to such employment. If any term of this Agreement is rendered invalid or unenforceable by judicial, legislative or administrative action, the remaining provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

16. **VOLUNTARY TERMINATION BY EMPLOYEE** - This Agreement (other than paragraphs 10, 11, 12, 13, and 14 hereof) may be terminated by Employee upon fifteen (15) days prior written notice given to Crump, or by other written agreement signed by both parties.

17. **INJUNCTIVE RELIEF** - This Agreement may be enforced by an injunction by any competent court enjoining and restraining any violation or threatened violation hereof without Crump being required to show any actual damage or to post any bond or other security.

18. **NOTICES** - All notices and consents provided for herein and all legal process shall be validly given, made or served, it in writing and delivered personally or sent by United States certified or registered mail, postage pre-paid, return receipt requested,

If to Employer:

Crump Insurance Services, Inc.
7557 Rambler Road, Suite 350
Dallas, Texas 75231-4163
ATTN: Marcus Payne

If to Employee:

Michael P. McGrath
552 Danby Court
Petaluma, California 94954

19. **GOVERNING LAW** - This Agreement shall be construed in accordance with the laws of the State of California.

20. **NO WAIVER** - No failure of Employee to exercise any right, power or privilege given to Crump under this Agreement or no failure to insist upon strict compliance by Employee with any agreement, covenant, warranty or other obligation under this Agreement or no custom or practice of the parties at variance with the terms hereof shall be construed as waiver or relinquishment of any right granted hereunder to Crump. Waiver by Crump of any particular default by Employee shall not affect or impair Crump's right, power or privilege in respect to any subsequent default of the same or of a different nature, nor shall any delay or omission of Crump to exercise any right, power or privilege arising from such default affect or impair Crump's right, power or privilege as to such default or any subsequent default.

21. **ASSIGNMENT** - This Agreement shall not be assignable by Employee, but may, with the prior consent of Employee, be assigned by Crump to any of the subsidiaries of Crump Group, Inc. and shall be binding upon and inure to the benefit of Crump's successors and assigns.

22. **BINDING NATURE OF AGREEMENT** - This Agreement shall inure to the benefit of and be binding upon and enforceable against the heirs, legal representatives and assigns of Employee and the successors and assigns of Crump.

IN WITNESS WHEREOF, the parties hereto by their duly authorized representatives have executed this Agreement as of the date first above written.

CRUMP E&S OF SAN FRANCISCO
INSURANCE SERVICES, INC.

By: Marvin Payne
Its: Sr. Vice President

By: Michael P. McGrath
Michael P. McGrath

8/31/07

FILED
San Francisco County Superior Court

AUG 31 2007

GORDON PARK-LI, Clerk

BY: *[Signature]* Deputy Clerk

60170-002

CASE MANAGEMENT CONFERENCE SET

FULBRIGHT & JAWORSKI L.L.P.
DOUGLAS W. STERN (BAR NO. 82973)
555 South Flower Street
Forty-First Floor
Los Angeles, CA 90071
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Attorneys for Plaintiff CRUMP INSURANCE
SERVICES, INC. a Texas Corporation

FEB 01 2008 -9⁰⁰AM

SUMMONS ISSUED DEPARTMENT 212

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

CRUMP INSURANCE SERVICES, INC. a
Texas Corporation,

Plaintiff,

v.

MICHAEL P. MCGRATH, an individual, ALL
RISKS, LTD. a corporation, and Does 1 through
50, inclusive,

Defendants.

Case No. **CSC-07-466804**

[Unlimited Civil Complaint]

Assigned For All Purposes To The
Honorable

COMPLAINT FOR DAMAGES FOR:

- (1) BREACH OF CONTRACT;
- (2) MISAPPROPRIATION OF
TRADE SECRETS;
- (3) BREACH OF FIDUCIARY
DUTY;
- (4) INTENTIONAL
INTERFERENCE WITH
PROSPECTIVE ECONOMIC
ADVANTAGE (CLIENTS);
- (5) NEGLIGENT INTERFERENCE
WITH PROSPECTIVE ECONOMIC
ADVANTAGE (CLIENT);
- (6) INTENTIONAL
INTERFERENCE WITH
PROSPECTIVE ADVANTAGE
(EMPLOYEES);
- (7) NEGLIGENT INTERFERENCE
WITH PROSPECTIVE ECONOMIC
ADVANTAGE (EMPLOYEES)

ORIGINAL

1 Plaintiff Crump Insurance Services, Inc., as successor to Crump E&S of San Francisco
2 Insurance Services, Inc. alleges as follows:

3 I.

4 THE PARTIES

5 1. Plaintiff Crump Insurance Services, Inc. ("Crump") is a corporation organized and
6 existing under the laws of the State of Texas, with its principle place of business located in
7 Dallas, Texas. Crump is the successor in interest to Crump E&S of San Francisco Insurance
8 Services, Inc. Plaintiff is engaged as an intermediary in the business of providing insurance to
9 customers.

10 2. At all times material hereto Plaintiff was qualified to do business in the State of
11 California.

12 3. Defendant Michael P. McGrath ("McGrath") is an individual residing in the State
13 of California, City of Novato.

14 4. Plaintiff is informed and believes, and on that basis alleges that Defendant All
15 Risks, Ltd. ("All Risks") is a corporation believed to exist under the laws of the State of
16 Maryland, with its principal place of business located in Hunt Valley, Maryland. Defendant All
17 Risks is a competitor of Plaintiff in the insurance business.

18 5. Plaintiff is ignorant of the true names and capacities of those individuals and
19 entities sued herein as Doe Defendants 1 through 50, inclusive. Plaintiff will amend this
20 Complaint to set forth their true names and capacities at such time as they are ascertained.

21 6. Plaintiff is informed and believes, and on that basis alleges that those defendants
22 sued herein as Does 1 through 50, inclusive, participated in the wrongs alleged herein, in various
23 capacities and are liable to Plaintiff for the claims asserted herein.

24 II.

25 BACKGROUND FACTS

26 7. On or about June 7, 1996, Defendant Michael P. McGrath entered into a written
27 contract titled "Memorandum of Agreement" with Crump E&S of San Francisco Insurance
28 Services, Inc. Plaintiff Crump Insurance Services, Inc. is the successor in interest to Crump E&S

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1 of San Francisco Insurance Services, Inc. A true and correct copy of the Memorandum of
2 Agreement is attached hereto as Exhibit 1.

3 8. Since the original Memorandum of Agreement was entered into in 1996, the
4 parties thereto have executed extensions of the Memorandum of Agreement. On or about April
5 30, 2007, Plaintiff and McGrath executed the "Broker Compensation Agreement." The Broker
6 Compensation Agreement, effective January 1, 2007, extended the terms of the Memorandum of
7 Agreement.

8 9. Pursuant to the June 7, 1996 Memorandum of Agreement, McGrath agreed to a
9 number of terms which he has violated as alleged more particularly below.

10 10. Pursuant to paragraph 10 of the June 7, 1996 Memorandum of Agreement,
11 McGrath agreed that in the course of his employment, he would obtain confidential information
12 belonging to Crump. This information would relate to the persons, firms, and corporations which
13 were, or would become, customers of Crump. Such confidential information would include, but
14 not be limited to, the names of customers, policy expirations dates, policy terms, conditions and
15 rates, and familiarity with customers' risks. Defendant McGrath agreed that he would not
16 disclose or make use of such confidential information, except as was required in the course of his
17 employment. He further agreed that upon termination of his employment, and for a period of one
18 year thereafter, he would not disclose or make use of such confidential information without the
19 prior written consent of Crump.

20 11. Pursuant to paragraph 11 the June 7, 1996 of the Memorandum of Agreement,
21 McGrath agreed that all records, files, manuals, lists of customers, blanks, forms, materials,
22 supplies, computer programs and other materials furnished to him by Crump would remain the
23 property of Crump. He further acknowledged that this property was confidential and not readily
24 accessible to Crump's competitors. Upon termination of the employment relationship, McGrath
25 agreed that he would immediately deliver to Crump or its authorized representatives all such
26 property, including copies.

27 12. Pursuant to paragraph 13 of the Memorandum of Agreement, McGrath agreed that
28 so long as he working for Crump, he would not engage in business activities competitive with the

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1 work he performed for Crump.

2 13. McGrath further agreed pursuant to paragraph 14 of the Memorandum of
3 Agreement, that he would not solicit employees of Crump for any other competitive company.

4 14. McGrath also agreed pursuant to paragraph 16 of the Memorandum of Agreement
5 that he would provide 15 days prior written notice to Crump should he wish to terminate his
6 position as an employee of Crump.

7 15. At some time prior to June 3, 2007, McGrath negotiated with Defendant All Risks
8 to cease being an employee of Plaintiff Crump and instead to become an employee of All Risks.
9 At some time prior to June 3, 2007, McGrath decided that he would terminate his employment
10 with Crump and begin employment with All Risks.

11 16. Prior to June 3, 2007, Defendant McGrath decided that he would take advantage of
12 the proprietary information of Crump and use such information to the advantage of himself and
13 his new employer, All Risks.

14 17. On or about May 31, 2007, after having decided that he would be leaving Plaintiff
15 Crump, and that he would be working for Defendant All Risks, Defendant McGrath, in violation
16 of the terms of this contract, and his obligations to Plaintiff, obtained information from Plaintiff
17 on expiration dates of policies, commissions, and customer renewal information. This
18 information was proprietary and confidential and of significant economic value to Plaintiff, and
19 would similarly have significant economic value to Defendant All Risks.

20 18. On or about June 3, 2007, without complying with the minimum 15 days written
21 notice provision set forth in the Memorandum of Agreement, paragraph 16, McGrath abruptly
22 notified Crump that he was terminating his employment with Crump and immediately
23 commencing employment with a competitor, Defendant All Risks.

24 19. Since June 4, 2007, Defendant McGrath has been an employee of Defendant All
25 Risk and has engaged in the conduct alleged herein below.

III.

FIRST CAUSE OF ACTION

[Breach of Contract – Against Defendant McGrath]

20. Crump incorporates by reference herein the allegations of paragraph 1 through 19 above.

21. Pursuant to the express terms of the June 7, 1996 Memorandum of Agreement, as renewed at various times through and including January 1, 2007, McGrath had agreed to those express obligations noted above in paragraphs 10 through 14 with respect to the utilization of confidential information belonging to Crump.

22. Plaintiff is informed and believes, and on that basis alleges that McGrath breached a number of provisions of the June 7, 1996 Memorandum of Agreement, including but not limited to paragraph 10, paragraph 11, paragraph 13, paragraph 14, and paragraph 16 thereof.

23. In particular, McGrath improperly and unlawfully misappropriated and used confidential information belonging to Crump. Plaintiff is informed and believes, and on that basis alleges that that this information included the identity of persons, firms and corporations which had become customers or accounts of Crump.

24. Plaintiff is informed and believes, and on that basis alleges that that the information used by McGrath also included the source with which the insurance was placed, as well as the names of customers, policy expiration dates, policy terms, conditions and rates and familiarity with the customers' risk, all of which were agreed constituted confidential information belonging to Crump.

25. At no time did Crump give its written consent to McGrath to utilize any of the confidential information.

26. Plaintiff is informed and believes, and on that basis alleges that McGrath disclosed to his new employer, All Risks, the confidential information which belonged to Crump.

27. McGrath breached the June 7, 1996 Memorandum of Agreement in that he improperly and unlawfully took for his own use, and the use of his new employer, All Risks, records, files and lists as well as other materials which had been furnished to him as a Crump

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1 employee. Plaintiff is informed and believes, and on that basis alleges that that such information
2 included confidential information belonging to Crump.

3 28. Plaintiff is informed and believes, and on that basis alleges that Defendant
4 McGrath obtained and has used electronic versions of confidential information of Crump.

5 29. Plaintiff is informed and believes, and on that basis alleges that while still under
6 the employ of Crump, Defendant McGrath engaged in business activities which were competitive
7 with the work he performed at Crump, in violation of his obligations to Crump.

8 30. Plaintiff is informed and believes, and on that basis alleges that while still an
9 employee of Crump, Defendant solicited Crump employees to cease their employment with
10 Crump, and instead commence employment with McGrath's new employer, All Risks.

11 31. Notwithstanding the fact that McGrath had agreed that he would provide 15 days
12 prior written notice to Crump should he wish to terminate the June 7, 1996 Memorandum of
13 Agreement, Crump breached such provision and failed to provide timely written notice of his
14 intent to terminate the relationship.

15 32. Plaintiff has performed each and every obligation imposed on it by the contract of
16 the parties in accordance with the terms thereof, except to the extent that such performance was
17 excused or prevented by the acts of defendant.

18 33. Plaintiff has been damaged by the various breaches of contract of McGrath in an
19 amount which has not yet been ascertained. Plaintiff will seek leave of this Court to state the
20 amount of its damages at such time as they are ascertained.

21 IV.

22 SECOND CAUSE OF ACTION

23 [Misappropriation Of Trade Secrets –

24 Against Defendants McGrath, All Risks and Does 1-50.]

25 34. Plaintiff incorporates herein by reference the allegations in paragraphs 1 through
26 33 above.

27 35. During the course of his employment, Defendant McGrath had access to, and was
28 provided various trade secrets which belonged to Plaintiff. These include, *inter alia*, client lists,

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1 expiration lists, underlying client information, and information regarding co-employees.

2 36. The information provided to Defendant McGrath was provided to him so that he
3 could perform his duties and obligations as an employee of Plaintiff. The information made
4 known to Defendant McGrath constituted trade secrets within the meaning of California Civil
5 Code Section 3426 *et seq.*

6 37. The information made known to Defendant McGrath had independent economic
7 value and was not generally known to the public or to other persons who could obtain economic
8 value from its disclosure or use.

9 38. At all times material hereto, Plaintiff took reasonable and appropriate efforts to
10 maintain the secrecy of its trade secrets.

11 39. Plaintiff is informed and believes, and on that basis alleges Defendants McGrath,
12 All Risks and Does 1-50 made use of the trade secrets of Plaintiff. Further, Defendants All Risks
13 and Does 1-50 obtained economic benefit by the use of the Plaintiff's trade secret.

14 40. Defendants have been unjustly enriched in that they have obtained the economic
15 value of the trade secrets of Plaintiff.

16 41. Plaintiff is informed and believes, and on that basis alleges that Defendants actions
17 were willful and malicious in misappropriating the trade secrets of Plaintiff, such that exemplary
18 damages may be awarded pursuant to Civil Code Section 3426.3.

19 42. Plaintiff has been damaged in an amount which is not presently known to Plaintiff.
20 Plaintiff will amend this Complaint to set forth the amount of damages it sustained at such time as
21 that amount is ascertained.

22 V.

23 **THIRD CAUSE OF ACTION**

24 **[Breach Of Fiduciary Duty – Against Defendant McGrath]**

25 43. Plaintiff incorporates herein by reference the allegations in paragraphs 1 through
26 42 above.

27 44. Defendant McGrath was a fiduciary of Plaintiff as a result of the position he held
28 and with respect to the information provided to him such as client lists, expiration lists,

1 underlying client information, and information relating to employees of Plaintiff.

2 45. Defendant McGrath was obligated as a fiduciary to make use of the information
3 provided to him solely in performing his obligation to Plaintiff.

4 46. Defendant McGrath breached his fiduciary duty to Plaintiff by, *inter alia*,
5 supplying to a competitor, All Risks, the information identified hereinabove, and making use of
6 that information to obtain from All Risk the benefits of that information and the business it
7 generated.

8 47. Defendant McGrath breached his fiduciary duty to Plaintiff by using the
9 information relating to employees of Plaintiff in order to solicit such employees to leave Plaintiff
10 Crump and to join Defendant All Risks.

11 48. As a result of the breach of fiduciary duty, Plaintiff has been damaged in an
12 amount not yet ascertained. Plaintiff will amend this Complaint to set forth such amount when
13 the amount has been ascertained.

14 49. The conduct of Defendant McGrath was undertaken with malice and oppression
15 with the desire to harm Plaintiff such that Plaintiff is entitled to the award of punitive damages
16 from Defendant McGrath.

17 VI.

18 FOURTH CAUSE OF ACTION

19 **[Intentional Interference With Prospective Economic Advantage (Clients) – Against** 20 **Defendants McGrath and All Risks and Does 1-50]**

21 50. Plaintiff incorporates herein by reference the allegations in paragraphs 1 through
22 49 above.

23 51. Plaintiff has a prospective economic advantage with respect to those of its
24 customer known to McGrath, to whom Plaintiff had provided insurance services.

25 52. Plaintiff is informed and believes, and on that basis alleges that Defendant All
26 Risks and Does 1-50 were aware of the fact that Plaintiff had a continuing prospective economic
27 advantage with respect to Plaintiff's clients who were known to Defendant McGrath. This
28 prospective economic advantage was derived from, in part, the confidential information of

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1 Crump.

2 53. Plaintiff had a reasonable expectation and likelihood that it would continue to
3 obtain the economic advantage arising from its preexisting relationships between Plaintiff and its
4 clients who were serviced or otherwise known to Defendant McGrath. Absent the conduct of
5 Defendants alleged herein, the economic relationship would have continued.

6 54. Plaintiff is informed and believes, and on that basis alleges that Defendant All
7 Risks and Does 1-50 intended to interfere with that prospective economic advantage and did so
8 by making use of the confidential information provided to it by Defendant McGrath.

9 55. The actions of Defendants actually caused the disruption of the economic
10 relationship between Plaintiff and some of its customers who were known to Defendant McGrath.

11 56. As a result of that conduct, Plaintiff has been damaged in an amount not yet
12 ascertained. Plaintiff will seek leave to amend this Complaint at such time as the amount of
13 damages are ascertained.

14 57. The conduct of Defendant All Risks and Does 1-50 was undertaken with malice
15 and oppression with the desire to harm Plaintiff such that Plaintiff is entitled to the award of
16 punitive damages from Defendant All Risks.

17 VII.

18 FIFTH CAUSE OF ACTION

19 [Negligent Interference With Prospective Economic Advantage (Clients) – Against 20 Defendants McGrath and All Risks and Does 1-50]

21 58. Plaintiff incorporates herein by reference the allegations in paragraphs 1 through
22 49 above.

23 59. Plaintiff has a prospective economic advantage with respect to those of its
24 customer known to McGrath, to whom Plaintiff had provided insurance services.

25 60. Plaintiff is informed and believes, and on that basis alleges that Defendant All
26 Risks and Does 1-50 were aware of the fact that Plaintiff had a continuing prospective economic
27 advantage with respect to Plaintiff's clients who were known to Defendant McGrath. This
28 prospective economic advantage was derived from, in part, the confidential information of

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1 Crump.

2 61. Plaintiff had a reasonable expectation and likelihood that it would continue to
3 obtain the economic advantage arising from its preexisting relationships between Plaintiff and its
4 clients who were serviced or otherwise known to Defendant McGrath. Absent the conduct of
5 Defendants alleged herein, the economic relationship would have continued.

6 62. Plaintiff is informed and believes, and on that basis alleges that Defendant All
7 Risks and Does 1-50 knew that if they did not act with reasonable care, their conduct would
8 interfere with the prospective economic advantage.

9 63. Defendants did not act with due care, but instead acted negligently in that they did
10 not take appropriate steps to insure that Defendant McGrath did not misuse the proprietary
11 information of Crump by McGrath.

12 64. The actions of Defendants actually caused the disruption of the economic
13 relationship between Plaintiff and some of its customers who were known to Defendant McGrath.

14 65. As a result of that conduct, Plaintiff has been damaged in an amount not yet
15 ascertained. Plaintiff will seek leave to amend this Complaint at such time as the amount of
16 damages are ascertained.

17 VIII.

18 SIXTH CAUSE OF ACTION

19 [Intentional Interference With Prospective Economic Advantage (Employees) – Against 20 Defendants McGrath and All Risks and Does 1-50]

21 66. Plaintiff incorporates herein by reference the allegations in paragraphs 1 through
22 49 above.

23 67. Plaintiff is informed and believes, and on that basis alleges that Defendant All
24 Risks and Does 1-50 were aware of the fact that Plaintiff had a continuing prospective economic
25 advantage with respect to its employees who were known to Defendant McGrath.

26 68. Plaintiff had a reasonable expectation and likelihood that it would continue to
27 obtain the economic benefits provided by those employees, arising from its preexisting
28 employment relationships.

69. Plaintiff is informed and believes, and on that basis alleges that Defendant All Risks and Does 1-50 intended to interfere with that prospective economic relationship existing with Plaintiff's employees, and did so by making use of the confidential information provided to it by Defendant McGrath with regard to such employees.

70. Plaintiff is informed and believes, and on that basis alleges that as a result of the actions of Defendants, the employees were induced to terminate their employment with Plaintiff and commence employment with Defendant All Risks.

71. As a result of that conduct, Plaintiff has been damaged in an amount not yet ascertained. Plaintiff will seek leave to amend this Complaint at such time as the amount of damages are ascertained.

72. The conduct of Defendant All Risks and Does 1-50 was undertaken with malice and oppression with the desire to harm Plaintiff such that Plaintiff is entitled to the award of punitive damages from Defendant All Risks.

IX.

SEVENTH CAUSE OF ACTION

[Negligent Interference With Prospective Economic Advantage (Employees) – Against Defendants McGrath and All Risks and Does 1-50]

73. Plaintiff incorporates herein by reference the allegations in paragraphs 1 through 49 above.

74. Plaintiff is informed and believes, and on that basis alleges that Defendant All Risks and Does 1-50 were aware of the fact that Plaintiff had a continuing prospective economic advantage with respect to its employees who were known to Defendant McGrath.

75. Plaintiff had a reasonable expectation and likelihood that it would continue to obtain the economic benefits provided by those employees, arising from its preexisting employment relationships.

76. Plaintiff is informed and believes, and on that basis alleges that Defendant All Risks and Does 1-50 knew that if they did not exercise due care, that their conduct would interfere with that prospective economic relationship existing with Plaintiff's employees.

1 77. Defendants acted negligently in that they did not take appropriate steps to insure
2 that no improper use of Plaintiff's proprietary information about its employees was use in order to
3 seek to induce such employees to terminate their relationship with Plaintiff. Instead, confidential
4 information provided to Defendant All Risks by Defendant McGrath with regard to such
5 employees was used.

6 78. Plaintiff is informed and believes, and on that basis alleges that as a result of the
7 actions of Defendants, the employees were induced to terminate their employment with Plaintiff
8 and commence employment with Defendant All Risks.

9 79. As a result of that conduct, Plaintiff has been damaged in an amount not yet
10 ascertained. Plaintiff will seek leave to amend this Complaint at such time as the amount of
11 damages are ascertained.

12 WHEREFORE, Plaintiff prays for judgment as follows:

- 13 1. For damages according to proof;
14 2. For punitive damages;
15 3. For appropriate injunctive relief preventing the use by Defendants of Plaintiffs
16 proprietary information;
17 4. For costs of suit herein;
18 5. For such other and further relief as the Court deems just and proper.

19 Dated: August 30, 2007

FULBRIGHT & JAWORSKI L.L.P.
DOUGLAS W. STERN

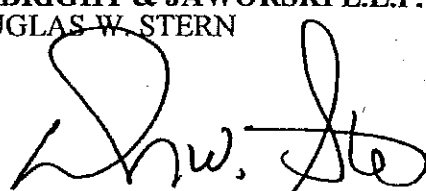
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22 By 
23 DOUGLAS W. STERN
24 Attorneys for Plaintiff CRUMP INSURANCE
25 SERVICES, INC.
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27
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EXHIBIT B

DOUGLAS W. STERN (BAR NO. 82973)
FULBRIGHT & JAWORSKI L.L.P.
555 South Flower Street
Forty-First Floor
Los Angeles, CA 90071
Telephone: (213) 892-9200
Facsimile: (213) 892-9494
Email: dstern@fulbright.com

Attorneys for Plaintiff CRUMP
INSURANCE SERVICES, INC.

Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CRUMP INSURANCE SERVICES, INC.,

Plaintiff,

v.

MICHAEL P. MCGRATH, an individual,
ALL RISKS, LTD., a corporation, and
Does 1 through 50, inclusive,

Defendants.

Civil Action No. C-07-4636 MMC

PLAINTIFF CRUMP
INSURANCE'S REQUEST FOR
PRODUCTION OF
DOCUMENTS AND TO TEST
AND SAMPLE COMPUTER(S)
[E.R.C.P. 34]

**REQUEST FOR PRODUCTION
OF DOCUMENTS AND TO TEST AND SAMPLE
COMPUTERS DIRECTED TO MICHAEL P. MCGRATH**

Pursuant to Rule 34 of the Federal Rules of Civil Procedure
("F.R.C.P."), Plaintiff hereby demands that Defendant Michael P. McGrath produce
for inspection and copying at the offices of Fulbright & Jaworski, 555 South Flower
Street, 41st Floor, Los Angeles, CA 90071 on February 8, 2008, at 10:00 a.m., all
items except those listed in category 1. The items requested in category 1 shall be
produced at AON Consulting, Forensic Accounting & Litigation Consulting

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1 Services, 199 Fremont Street, 17th Floor, San Francisco, CA 94105. Defendant
2 Michael P. McGrath is requested to produce for copying, testing and sampling all
3 computers utilized by him at any time from March 1, 2007 through July 1, 2007, or
4 any portion of that time, for copying, testing and sampling as indicated herein
5 below.

6 **The Materials Requested in Categories 2-38 Should be Produced**
7 **in Both Paper and Electronic Form to the Extent That They Exist in Both**
8 **Forms.**

9 **Definitions**

- 10 1. The terms "You" or "Your" shall mean Michael P. McGrath.
- 11 2. The term "document" is defined to be synonymous in meaning and
12 equal in scope to the usage of the term in Rule 34(a) of the Federal Rules of Civil
13 Procedure. Not by way of limitation, but instead as examples, this means any
14 papers or writings, including drafts, and any mechanical or electronic recordings or
15 records of any kind in Your possession, custody or under Your control or of which
16 You have knowledge, wherever located, whether an original or a copy, including
17 agreements, applications, financial statements, invoices, minutes, memoranda,
18 notes, records, interoffice communications, tape or other recordings, microfilm,
19 microfiche, telegrams, letters, photographs, handwritten notes, drawings,
20 specifications, data, reports, printed matters, publications, computer discs, computer
21 tapes, computer files, offers, binders, proposals or statements. Any copy contained
22 thereon or attached thereto, any alterations, notes, comments, or other material not
23 included in the originals or copies referred to in the preceding sentence, shall be
24 deemed a separate document within the foregoing definition.
- 25 3. The term "concerning" means relating to, referring to, describing,
26 evidencing or constituting.
- 27 4. The term "including" means including without limitation.
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1 5. The term "person" means any natural person or any business, legal or
2 governmental entity or association.

3 6. The term "communication" means the transmittal of information (in
4 the form of facts, ideas, inquiries or otherwise).

5 7. The term "electronically stored information" is defined to be
6 synonymous in meaning and equal in scope to the usage of the term in F.R.C.P.
7 Rule 34(a). Not by way of limitation, but instead as examples, this means any
8 writings, including drafts, drawings, graphs, charts, photographs, sound recordings,
9 images, and other data or data compilations stored in any medium from which
10 information can be in Your possession, custody or under Your control or of which
11 You have knowledge, wherever located, whether an original or a copy. Any copy
12 contained thereon or attached thereto, any alterations, notes, comments, or other
13 material not included in the originals or copies referred to in the preceding
14 sentence, shall be deemed a separate document within the foregoing definition.

15 **Interpretation and Construction**

16 8. The use of the singular form of any word includes the plural and vice
17 versa.

18 9. The term "any" means and shall be construed as "each and every" as
19 necessary to make the request inclusive rather than exclusive.

20 10. The terms "and" and "or" shall be construed either disjunctively or
21 conjunctively as necessary to bring within the scope of the discovery request all
22 responses that might otherwise be construed to be outside of its scope.

23 11. The terms "all" and "each" shall be construed as all and each.

24 **Instructions**

25 12. This request is a continuing one, and You are under a continuing duty
26 to correct Your responses pursuant to F.R.C.P. Rule 26(e).

1 13. In producing documents, You are requested to furnish all documents
2 known or available to You regardless of whether these documents are possessed
3 directly by You, or are in custody or control of You or Your agents, employees,
4 representatives or investigators.

5 14. If any document is withheld or communication not identified because
6 of a claim of privilege or work product, You must produce a log which states:

- 7 1. the nature of the privilege being claimed and;
- 8 2. unless divulgence of such information would cause disclosure of
9 allegedly privileged information:
- 10 (i) the type of document;
- 11 (ii) the general subject matter of the document;
- 12 (iii) the date of the document; and
- 13 (iv) such other information as is sufficient to identify the
14 document for a subpoena duces tecum, including, where
15 appropriate, the author of the document, the addressee of
16 the document, and, where not apparent, the relationship of
17 the author to the addressee, and the names of all entities
18 that received a copy of the document.

19 15. Unless otherwise instructed, the documents requested herein
20 encompass the entire time period from January 1, 2007, through and including
21 September 1, 2007.

22 16. All objections and responses to the document requests herein shall be
23 made in writing and delivered to the offices of Fulbright & Jaworski L.L.P., 555
24 South Flower Street, Los Angeles, California 90071 (attention Douglas W. Stern),
25 within the time period specified by F.R.C.P. 34(b)(2)(A).

26 17. Documents produced in response to this request shall be produced in
27 the order in which they are kept in the usual course of business, with all identifying
28 folders, file labels and file drawer or box labels intact.

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1 18. To the extent that You have in Your possession, custody or control
2 more than one copy of any particular responsive document, You shall produce each
3 and every copy thereof.

4 **Documents Requested**

5
6 1. Each computer which You utilized during any portion of the period
7 March 1, 2007 through July 1, 2007, for the purpose of testing and sampling it to
8 obtain electronic copies of the below listed documents, including meta data related
9 thereto.

10 2. All documents and electronically stored information, from January 1,
11 2007, through September 1, 2007, concerning or relating to All Risks, Ltd.

12 3. All documents and electronically stored information, from January 1,
13 2007, through September 1, 2007, concerning or relating to Your obtaining
14 employment with All Risks, Ltd.

15 4. Your copy of the Memorandum of Agreement entered into between
16 Michael McGrath and Crump Insurance Services dated June 7, 1996.

17 5. Your copy of all Amendments or Addendum to the Memorandum of
18 Agreement entered into between Michael McGrath and Crump Insurance Services
19 dated June 7, 1996.

20 6. Your copy of all Broker Compensation Agreements entered into
21 between Michael McGrath and Crump Insurance Services.

22 7. All documents and electronically stored information, from January 1,
23 2007, through September 1, 2007, concerning or relating to clients or customers of
24 Crump Insurance Services which You retained or obtained following the
25 termination of employment with the Crump Insurance Services.

26 8. All documents and electronically stored information, from January 1,
27 2007, through the present, concerning or relating to solicitation of insurance
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1 business from any customers or clients of Crump Insurance Services wherein You
2 were seeking such business for All Risks, Ltd.

3 9. All documents and electronically stored information, from January 1,
4 2007, through the present, concerning or relating to solicitation of employees of
5 Crump Insurance Services to work with All Risks, Ltd.

6 10. All documents and electronically stored information, from January 1,
7 2007, through September 1, 2007, concerning or relating to obtaining Broker of
8 Record letters designating All Risks, Ltd. as a broker of record in place of Crump
9 Insurance Services.

10 11. All documents and electronically stored information, from January 1,
11 2007, through September 1, 2007, concerning or relating to the dollar amount of
12 business which You believed You could bring to All Risks, Ltd. if You were
13 employed by it.

14 12. All documents and electronically stored information, from January 1,
15 2007, through September 1, 2007, concerning or relating to Cindi Marty.

16 13. All documents and electronically stored information, from January 1,
17 2007, through September 1, 2007, concerning or relating to Menlo Equities LLC
18 insurance business.

19 14. All documents and electronically stored information, from January 1,
20 2007, through September 1, 2007, concerning or relating to Alecta Real Estate USA
21 LLC insurance business.

22 15. All documents and electronically stored information, from January 1,
23 2007, through September 1, 2007, concerning or relating to Jay & Carole Hagglund
24 Trust insurance business.

25 16. All documents and electronically stored information, from January 1,
26 2007, through September 1, 2007, concerning or relating to North First Street
27 Properties insurance business.

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1 17. All documents and electronically stored information, from January 1,
2 2007, through September 1, 2007, concerning or relating to Brandenburg Staedler
3 & Moore insurance business.

4 18. The document or documents which You contend constitute Your notice
5 to plaintiff that You were ceasing Your employ with plaintiff.

6 19. All documents which You contend support Your Second Affirmative
7 Defense that the causes of action set forth in the Complaint are barred, in whole or
8 in part, by the doctrine of waiver.

9 20. All documents which You contend support Your Third Affirmative
10 Defense that the causes of action in the Complaint are barred, in whole or in part by
11 the doctrine of estoppel.

12 21. All documents which You contend support Your Fourth Affirmative
13 Defense that the causes of action in the Complaint are barred, in whole or in part by
14 the doctrine of unclean hands.

15 22. All documents which You contend support Your Fifth Affirmative
16 Defense that the causes of action in the Complaint are barred, in whole or in part by
17 the doctrine of laches.

18 23. All documents which You contend support Your Sixth Affirmative
19 Defense that the causes of action in the Complaint are barred by the applicable
20 statute of limitations.

21 24. All documents which You contend support Your Seventh Affirmative
22 Defense that the causes of action in the Complaint are privileged by legitimate
23 business necessity and/or other reasons.

24 25. All documents which You contend support Your Eighth Affirmative
25 Defense that the agreement alleged in the Complaint is void or voidable for lack of
26 consideration.

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1 26. All documents which You contend support Your Ninth Affirmative
2 Defense that the agreement alleged in the Complaint is in illegal and/or in
3 contravention of public policy.

4 27. All documents which You contend support Your Tenth Affirmative
5 Defense that the agreement alleged in the Complaint is void under California
6 Business & Professions Code section 16600.

7 28. All documents which You contend support Your Eleventh Affirmative
8 Defense that the agreement alleged in the Complaint fails because it is vague and
9 ambiguous as to material terms.

10 29. All documents which You contend support Your Twelfth Affirmative
11 Defense that the imposition of punitive or exemplary damages would violate of the
12 Constitution of the United States of America and the State of California.

13 30. All documents which You contend support Your Thirteenth
14 Affirmative Defense that the defendants acted without malice and with a good faith
15 belief in the propriety of their conduct.

16 31. All documents and electronically stored information, from January 1,
17 2007, through September 1, 2007, concerning or relating to policy expiration dates
18 of customers of Plaintiff.

19 32. All documents and electronically stored information, from January 1,
20 2007, through September 1, 2007, concerning or relating to the names of customers
21 of Plaintiff.

22 33. All documents and electronically stored information, from January 1,
23 2007, through September 1, 2007, concerning or relating to the policy terms,
24 conditions and rates provided to various customers of the Plaintiff.

25 34. All documents and electronically stored information, from January 1,
26 2007, through September 1, 2007, originating with Plaintiff or from Plaintiff's
27 information, and provided by You to All Risks, Ltd.

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1 35. All documents and electronically stored information, from January 1,
2 2007, through September 1, 2007, concerning or relating to the reason or reasons
3 why You failed to provide a minimum of 15 days prior written notice to Plaintiff of
4 Your intention to terminate employment with Plaintiff.

5 36. All documents and electronically stored information, from January 1,
6 2007, through September 1, 2007, concerning or relating to efforts made by You to
7 solicit Cindi Marty to become an employee of All Risks, Ltd.

8 37. All documents and electronically stored information, from January 1,
9 2007, through July 1, 2007, provided by You to All Risks, Ltd. in order to assist it
10 to obtain insurance business.

11 38. Any and all list of customers of the Crump Insurance Services.
12
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14 Dated: January 3, 2008
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DOUGLAS W. STERN
FULBRIGHT & JAWORSKI L.L.P.

16
17 By 
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DOUGLAS W. STERN
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PROOF OF SERVICE

I, Martha Delgado, declare:

I am a citizen of the United States and employed in Los Angeles County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 555 South Flower Street, Forty-First Floor, Los Angeles, California 90071. On January 2, 2008, I served a copy of the within document(s): _____

(BY FACSIMILE) I caused said document to be transmitted electronically to the interested parties at the facsimile numbers as stated above.

X (BY MAIL) I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the United States Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing affidavit.

(BY FEDERAL EXPRESS) I caused the aforementioned document to be placed in an envelope or package designated by Federal Express, with delivery fees fully paid and addressed as stated above.

(BY PERSONAL SERVICE) I caused the aforementioned document to be personally served at the office of interested parties as stated above.

Stephen J. Hirschfeld, Esq.
Donna M. Rutter, Esq.
Zachary P. Hutton, Esq.
CURIALE DELLAVERSON HIRSCHFELD & KRAEMER, LLP
727 Sansome Street
San Francisco, CA 94111
Telephone: (415) 835-9000
Facsimile: (415) 834-0443

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the

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1 U.S. Postal Service on that same day with postage thereon fully prepaid in the
2 ordinary course of business. I am aware that on motion of the party served, service
3 is presumed invalid if postal cancellation date or postage meter date is more than
4 one day after date of deposit for mailing in affidavit.

5 I declare that I am employed in the office of a member of the bar of this court
6 at whose direction the service was made.

7 Executed on January 3, 2008, at Los Angeles, California.

8
9 

10 Martha Delgado
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EXHIBIT C

2112
COPY

1 STEPHEN J. HIRSCHFELD (SBN 118068)
2 DONNA M. RUTTER (SBN 145704)
3 KRISTEN L. WILLIAMS (SBN 232644)
4 CURIALE DELLAVERSON HIRSCHFELD
5 & KRAEMER, LLP
6 727 Sansome Street
7 San Francisco, CA 94111
8 Telephone: (415) 835-9000
9 Facsimile: (415) 834-0443
10
11 Attorneys for Defendants
12 MICHAEL P. MCGRATH and ALL RISKS, LTD.

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN MATEO

11 CRUMP INSURANCE SERVICES, INC.,

12 Plaintiff,

13 vs.

14 MICHAEL P. MCGRATH, an individual,
15 ALL RISKS, LTD., a corporation, and
16 Does 1 through 50, inclusive,

16 Defendants.

Case No. C-07-4636 MMC

DEFENDANT ALL RISKS, LTD'S
RESPONSE TO PLAINTIFF'S CRUMP
INSURANCE'S REQUEST FOR
PRODUCTION OF DOCUMENTS
[F.R.C.P. 34]

17 PROPOUNDING PARTY: Plaintiff, CRUMP INSURANCE SERVICES
18 RESPONDING PARTY: Defendant, ALL RISKS, LTD.
19 SET NUMBER: ONE (1)
20

21 **PRELIMINARY STATEMENT AND GENERAL OBJECTIONS**

22 Defendant All Risks, Ltd. ("Defendant") hereby responds to Plaintiff Crump Insurance
23 Services ("Plaintiff") Request for Production of Documents (Set One). The following responses
24 and objections are made solely for the purposes of this action. Each response is subject to all
25 objections as to competence, relevance, materiality, propriety, admissibility, and any and all other
26 objections and grounds that would require the exclusion of any statement, if any statements
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1 contained herein were made by a witness present and testifying in court, all of which objections
2 and grounds are reserved and may be interposed at the time of trial.

3 Defendant's discovery and investigation has proceeded with diligence but it is,
4 nevertheless, incomplete and continuing. Accordingly, the following responses represent
5 Defendant's current knowledge based on information reasonably available to it, and are as
6 complete as Defendant is now required by law and is able to give. The responses do not,
7 however, contain other facts which may be obtained through ongoing factual investigation,
8 review, analysis, discovery and trial preparation. To the extent these Requests may be construed
9 as requesting more detail, or to the extent Plaintiff contends Defendant's responses are inadequate
10 or incomplete, Defendant objects on the grounds that any further responses at this time would be
11 unduly burdensome, oppressive and require a degree of completeness not required by law.
12 Defendant reserves its right to present additional evidence at trial based on information
13 subsequently obtained or evaluated.

14 Except for explicit facts submitted herein, no incidental or implied admissions are
15 intended hereby. The fact that Defendant has answered or objected to any Request for Production
16 or part thereof should not be taken as an admission that Defendant accepts or admits the existence
17 of any facts set forth or assumed by such Request Production and that such answer or objection
18 constitutes admissible evidence. The fact that Defendant has answered part or all of any Request
19 for Production is not intended, and shall not be construed, to be a waiver by Defendant of all or
20 any part of any objection to any Request for Production.

21 To the extent that any or all of the Requests call for information or material which was
22 prepared in anticipation of litigation or for trial or for information or material covered by the
23 attorney-client privilege or attorney work-product doctrine or which constitutes information or
24 material which is privileged or related to confidential trade secrets or privacy (including freedom
25 of association and financial privacy), Defendant objects to each and every such Request for
26 Production and thus will not supply or render any information or material protected from
27 discovery by virtue of the work-product doctrine, the attorney-client privilege, or trade secret
28 and/or privacy privileges.

1 The above-stated objections are hereby made applicable to each and all of these Requests
 2 for Production and are hereby, as to each and all of them, incorporated by reference as if fully set
 3 forth therein.

4
 5 **REQUEST FOR PRODUCTION OF DOCUMENTS**

6 **REQUEST FOR PRODUCTION NO. 1:**

7 All documents and electronically stored information from January 1, 2007 through
 8 September 1, 2007, concerning or relating to Your hiring of Michael P. McGrath as an employee
 9 of All Risks, Ltd.

10 **RESPONSE TO REQUEST FOR PRODUCTION NO. 1:**

11 Defendant objects to this request as overly broad. Defendant objects to this request as it
 12 seeks confidential, proprietary or trade secret information. Defendant further objects that this
 13 response seeks to violate constitutional, statutory, and/or common law privacy rights of third
 14 parties not party to this litigation. Subject to and without waiving the foregoing, Defendant
 15 responds as follows: Defendant will produce all documents responsive to this request in its
 16 possession, custody, or control that it deems are responsive to this request.

17 **REQUEST FOR PRODUCTION NO. 2:**

18 All documents and electronically stored information from January 1, 2007 through
 19 September 1, 2007, concerning or relating to clients or customers of Crump Insurance Services
 20 which You obtained following the termination of Michael P. McGrath's employment with Crump
 21 Insurance Services.

22 **RESPONSE TO REQUEST FOR PRODUCTION NO. 2:**

23 Defendant objects to this request as overly broad. Defendant objects to this request as it
 24 seeks confidential, proprietary or trade secret information. Defendant objects to this request as
 25 vague and ambiguous as to the phrase "clients or customers of Crump Insurance Services" make a
 26 response impossible without speculation as to the true meaning of the phrase or whether
 27 Defendant is actually aware of Crump's clients or customers.

REQUEST FOR PRODUCTION NO. 3:

All documents and electronically stored information from January 1, 2007 through the present, concerning or relating to solicitation of insurance business from any customers or clients of Crump Insurance Services wherein You were provided information about that customer or client from Michael P. McGrath.

RESPONSE TO REQUEST FOR PRODUCTION NO. 3:

Defendant objects to this request as overly broad. Defendant further objects to this request as it assumes facts not in evidence. Defendant objects to this request as it calls for a legal conclusion and thereby seeks to violate the attorney-client and attorney work product privileges. Defendant objects to this request as vague and ambiguous as to the phrase "clients or customers of Crump Insurance Services" make a response impossible without speculation as to the true meaning of the phrase or whether Defendant is actually aware of Crump's clients or customers.

REQUEST FOR PRODUCTION NO. 4:

All documents and electronically stored information from January 1, 2007 through the present, concerning or relating to solicitation of employees of Crump Insurance Services to work with All Risks, Ltd.

RESPONSE TO REQUEST FOR PRODUCTION NO. 4:

Defendant objects to this request as overly broad. Defendant further objects to this request as it assumes facts not in evidence. Defendant objects to this request as it calls for a legal conclusion and thereby seeks to violate the attorney-client and attorney work product privileges.

REQUEST FOR PRODUCTION NO. 5:

All documents and electronically stored information from January 1, 2007 through September 1, 2007, concerning or relating to obtaining Broker of Record letters designating All Risks, Ltd. as a broker of record in place of Crump Insurance Services.

RESPONSE TO REQUEST FOR PRODUCTION NO. 5:

Defendant objects to this request as overly broad. Defendant objects to this request as it seeks confidential, proprietary or trade secret information. Subject to and without waiving the foregoing, Defendant responds as follows: Defendant will produce any documents responsive to

1 this request in his possession, custody or control that relate to clients of Michael McGrath.

2 **REQUEST FOR PRODUCTION NO. 6:**

3 All documents and electronically stored information from January 1, 2007 through
4 September 1, 2007, concerning or relating to the dollar amount of business which You believed
5 Michael P. McGrath could bring to All Risks, Ltd. if You were employed by You.

6 **RESPONSE TO REQUEST FOR PRODUCTION NO. 6:**

7 Defendant objects to this request is vague and ambiguous and unintelligible, specifically
8 regarding the phrase "which You believed Michael P. McGrath could bring to All Risks, Ltd. if
9 You were employed by You" making a response impossible without speculation as to the true
10 meaning of the phrase. Defendant further objects to the request as it assumes facts not in
11 evidence. Subject to and without waiving the foregoing, Defendant responds as follows:
12 Defendant has performed a diligent and does not have any documents responsive to this request in
13 its possession, custody or control.

14 **REQUEST FOR PRODUCTION NO. 7:**

15 All documents and electronically stored information from January 1, 2007 through
16 September 1, 2007, concerning or relating to the possible employment of Cindi Marty.

17 **RESPONSE TO REQUEST FOR PRODUCTION NO. 7:**

18 Defendant objects to this request as overly broad. Defendant further objects that this
19 response seeks to violate constitutional, statutory, and/or common law privacy rights of third
20 parties not party to this litigation.

21 **REQUEST FOR PRODUCTION NO. 8:**

22 All documents and electronically stored information from January 1, 2007 through
23 September 1, 2007, concerning or relating to Menlo Equities LLC insurance business.

24 **RESPONSE TO REQUEST FOR PRODUCTION NO. 8:**

25 Defendant objects to this request as overly broad. Defendant objects to this request as it
26 seeks information that is neither relevant to this action nor reasonably calculated to lead to the
27 discovery of admissible evidence. Defendant objects to this request as it seeks confidential,
28 proprietary or trade secret information.

REQUEST FOR PRODUCTION NO. 9:

All documents and electronically stored information from January 1, 2007 through September 1, 2007, concerning or relating to Alecta Real Estate USA LLC insurance business.

RESPONSE TO REQUEST FOR PRODUCTION NO. 9:

Defendant objects to this request as overly broad. Defendant objects to this request as it seeks information that is neither relevant to this action nor reasonably calculated to lead to the discovery of admissible evidence. Defendant objects to this request as it seeks confidential, proprietary or trade secret information.

REQUEST FOR PRODUCTION NO. 10:

All documents and electronically stored information from January 1, 2007 through September 1, 2007, concerning or relating to Jay & Carole Hagglund Trust Insurance business.

RESPONSE TO REQUEST FOR PRODUCTION NO. 10:

Defendant objects to this request as overly broad. Defendant objects to this request as it seeks information that is neither relevant to this action nor reasonably calculated to lead to the discovery of admissible evidence. Defendant objects to this request as it seeks confidential, proprietary or trade secret information.

REQUEST FOR PRODUCTION NO. 11:

All documents and electronically stored information from January 1, 2007 through September 1, 2007, concerning or relating to North First Street Properties insurance business.

RESPONSE TO REQUEST FOR PRODUCTION NO. 11:

Defendant objects to this request as overly broad. Defendant objects to this request as it seeks information that is neither relevant to this action nor reasonably calculated to lead to the discovery of admissible evidence. Defendant objects to this request as it seeks confidential, proprietary or trade secret information.

REQUEST FOR PRODUCTION NO. 12:

All documents and electronically stored information from January 1, 2007 through September 1, 2007, concerning or relating to Brandenburg Staedler & Moore insurance business.

RESPONSE TO REQUEST FOR PRODUCTION NO. 12:

Defendant objects to this request as overly broad. Defendant objects to this request as it seeks information that is neither relevant to this action nor reasonably calculated to lead to the discovery of admissible evidence. Defendant objects to this request as it seeks confidential, proprietary or trade secret information.

REQUEST FOR PRODUCTION NO. 13:

All documents which You contend support Your Second Affirmative Defense that the causes of action set forth in the Complaint are barred, in whole or in part, by the doctrine of waiver.

RESPONSE TO REQUEST FOR PRODUCTION NO. 13:

Defendant objects to this request as overly broad. Defendant further objects to this request as it calls for a legal conclusion and therefore seeks to violate the attorney-client and attorney work product privileges. Subject to and without waiving the foregoing, Defendant responds as follows: Discovery is continuing and Defendant will produce any documents responsive to this request in its possession, custody, or control.

REQUEST FOR PRODUCTION NO. 14:

All documents which You contend support Your Third Affirmative Defense that the causes of action in the Complaint are barred, in whole or in part by the doctrine of estoppel.

RESPONSE TO REQUEST FOR PRODUCTION NO. 14:

Defendant objects to this request as overly broad. Defendant further objects to this request as it calls for a legal conclusion and therefore seeks to violate the attorney-client and attorney work product privileges. Subject to and without waiving the foregoing, Defendant responds as follows: Discovery is continuing and Defendant will produce any documents responsive to this request in its possession, custody, or control.

REQUEST FOR PRODUCTION NO. 15:

All documents which You contend support Your Fourth Affirmative Defense that the causes of action in the Complaint are barred, in whole or in part by the doctrine of unclean hands.

RESPONSE TO REQUEST FOR PRODUCTION NO. 15:

Defendant objects to this request as overly broad. Defendant further objects to this request as it calls for a legal conclusion and therefore seeks to violate the attorney-client and attorney work product privileges. Subject to and without waiving the foregoing, Defendant responds as follows: Discovery is continuing and Defendant will produce any documents responsive to this request in its possession, custody, or control.

REQUEST FOR PRODUCTION NO. 16:

All document which You contend support Your Fifth Affirmative Defense that the causes of action in the Complaint are barred, in whole or in part by the doctrine of laches.

RESPONSE TO REQUEST FOR PRODUCTION NO. 16:

Defendant objects to this request as overly broad. Defendant further objects to this request as it calls for a legal conclusion and therefore seeks to violate the attorney-client and attorney work product privileges. Subject to and without waiving the foregoing, Defendant responds as follows: Discovery is continuing and Defendant will produce any documents responsive to this request in its possession, custody, or control.

REQUEST FOR PRODUCTION NO. 17:

All documents which You contend support Your Sixth Affirmative Defense that the causes of action in the Complaint are barred by the applicable statute of limitations.

RESPONSE TO REQUEST FOR PRODUCTION NO. 17:

Defendant objects to this request as overly broad. Defendant further objects to this request as it calls for a legal conclusion and therefore seeks to violate the attorney-client and attorney work product privileges. Subject to and without waiving the foregoing, Defendant responds as follows: Discovery is continuing and Defendant will produce any documents responsive to this request in its possession, custody, or control.

REQUEST FOR PRODUCTION NO. 18:

All document which You contend support Your Seventh Affirmative Defense that the causes of action in the Complaint are privileged by legitimate business necessity and/or other reasons.

RESPONSE TO REQUEST FOR PRODUCTION NO. 18:

Defendant objects to this request as overly broad. Defendant further objects to this request as it calls for a legal conclusion and therefore seeks to violate the attorney-client and attorney work product privileges. Subject to and without waiving the foregoing, Defendant responds as follows: Discovery is continuing and Defendant will produce any documents responsive to this request in its possession, custody, or control.

REQUEST FOR PRODUCTION NO. 19:

All documents which You contend support Your Eighth Affirmative Defense that the agreement alleged in the Complaint is void or voidable for lack of consideration.

RESPONSE TO REQUEST FOR PRODUCTION NO. 19:

Defendant objects to this request as overly broad. Defendant further objects to this request as it calls for a legal conclusion and therefore seeks to violate the attorney-client and attorney work product privileges. Subject to and without waiving the foregoing, Defendant responds as follows: Discovery is continuing and Defendant will produce any documents responsive to this request in its possession, custody, or control.

REQUEST FOR PRODUCTION NO. 20:

All documents which You contend support Your Ninth Affirmative Defense that the agreement in the complaint is in illegal and/or contravention of public policy.

RESPONSE TO REQUEST FOR PRODUCTION NO. 20:

Defendant objects to this request as overly broad. Defendant further objects to this request as it calls for a legal conclusion and therefore seeks to violate the attorney-client and attorney work product privileges. Subject to and without waiving the foregoing, Defendant responds as follows: Discovery is continuing and Defendant will produce any documents responsive to this request in its possession, custody, or control.

REQUEST FOR PRODUCTION NO. 21:

All documents which You contend support your Tenth Affirmative Defense that the agreement alleged in the Complaint is void under California Business & Professions Code section 16600.

RESPONSE TO REQUEST FOR PRODUCTION NO. 21:

Defendant objects to this request as overly broad. Defendant further objects to this request as it calls for a legal conclusion and therefore seeks to violate the attorney-client and attorney work product privileges. Subject to and without waiving the foregoing, Defendant responds as follows: Discovery is continuing and Defendant will produce any documents responsive to this request in its possession, custody, or control.

REQUEST FOR PRODUCTION NO. 22:

All documents which You contend support Your Eleventh Affirmative Defense that the agreement alleged in the complaint fails because it is vague and ambiguous as to material terms.

RESPONSE TO REQUEST FOR PRODUCTION NO. 22:

Defendant objects to this request as overly broad. Defendant further objects to this request as it calls for a legal conclusion and therefore seeks to violate the attorney-client and attorney work product privileges. Subject to and without waiving the foregoing, Defendant responds as follows: Discovery is continuing and Defendant will produce any documents responsive to this request in its possession, custody, or control.

REQUEST FOR PRODUCTION NO. 23:

All documents which You contend support Your Twelfth Affirmative Defense that the imposition of punitive or exemplary damages would violate of the Constitution of the United States of America and the State of California.

RESPONSE TO REQUEST FOR PRODUCTION NO. 23:

Defendant objects to this request as overly broad. Defendant further objects to this request as it calls for a legal conclusion and therefore seeks to violate the attorney-client and attorney work product privileges. Subject to and without waiving the foregoing, Defendant responds as follows: Discovery is continuing and Defendant will produce any documents responsive to this request in its possession, custody, or control.

REQUEST FOR PRODUCTION NO. 24:

All documents which You contend support Your Thirteenth Affirmative Defense that the defendants acted without malice and with a good faith belief in the propriety of their conduct.

RESPONSE TO REQUEST FOR PRODUCTION NO. 24:

Defendant objects to this request as overly broad. Defendant further objects to this request as it calls for a legal conclusion and therefore seeks to violate the attorney-client and attorney work product privileges. Subject to and without waiving the foregoing, Defendant responds as follows: Discovery is continuing and Defendant will produce any documents responsive to this request in its possession, custody, or control.

REQUEST FOR PRODUCTION NO. 25:

All documents and electronically stored information from January 1, 2007 through September 1, 2007, concerning or relating to policy expiration dates of customers of Plaintiff.

RESPONSE TO REQUEST FOR PRODUCTION NO. 25:

Defendant objects to this request as overly broad. Defendant objects to this request as it seeks information that is neither relevant to this action nor reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects that this response seeks to violate constitutional, statutory, and/or common law privacy rights of third parties not party to this litigation. Subject to and without waiving the foregoing, Defendant responds as follows: Defendant has performed a reasonable and diligent search and does not have any documents responsive to this request in his possession, custody or control.

REQUEST FOR PRODUCTION NO. 26:

All documents and electronically stored information from January 1, 2007 through September 1, 2007, concerning or relating to efforts made by You to obtain Cindi Marty as an employee of All Risks, Ltd.

RESPONSE TO REQUEST FOR PRODUCTION NO. 26:

Defendant objects to this request as overly broad. Defendant objects to this request as it assumes facts not in evidence. Defendant objects to this request as it seeks information that is neither relevant to this action nor reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects that this response seeks to violate constitutional, statutory, and/or common law privacy rights of third parties not party to this litigation.

REQUEST FOR PRODUCTION NO. 27:

All documents and electronically stored information from January 1, 2007 through July 1, 2007, provided to You by Michael P. McGrath in order to obtain insurance business.

RESPONSE TO REQUEST FOR PRODUCTION NO. 27:

Defendant objects to this request as overly broad. Defendant objects to this request as it assumes facts not in evidence. Subject to and without waiving the foregoing, Defendant responds as follows: Defendant has performed a reasonable and diligent search and does not have any documents responsive to this request in its possession, custody or control.

REQUEST FOR PRODUCTION NO. 28:

Any and all list of customers of the Crump Insurance Services.

RESPONSE TO REQUEST FOR PRODUCTION NO. 28:

Defendant objects to this request as overly broad. Defendant objects to this request as it assumes facts not in evidence. Subject to and without waiving the foregoing, Defendant responds as follows: Defendant has performed a reasonable and diligent search and does not have any documents responsive to this request in its possession, custody or control.

REQUEST FOR PRODUCTION NO. 29:

Any and all information provided to You by Michael P. McGrath related to the expiration of insurance for any customer of Crump Insurance Services.

RESPONSE TO REQUEST FOR PRODUCTION NO. 29:

Defendant objects to this request as overly broad. Defendant objects to this request as it assumes facts not in evidence. Subject to and without waiving the foregoing, Defendant responds as follows: Defendant has performed a reasonable and diligent search and does not have any documents responsive to this request in its possession, custody or control.

REQUEST FOR PRODUCTION NO. 30:

Any and all information provided to You by Michael P. McGrath related to the policies of insurance for any customer of Crump Insurance Services.

RESPONSE TO REQUEST FOR PRODUCTION NO. 30:

Defendant objects to this request as overly broad. Defendant objects to this request as it

1 assumes facts not in evidence. Subject to and without waiving the foregoing, Defendant responds
2 as follows: Defendant has performed a reasonable and diligent search and does not have any
3 documents responsive to this request in its possession, custody or control.

4 Dated: February 13, 2008

CURIALE DELLAVERSON HIRSCHFELD
& KRAEMER, LLP

6 By: Kristen L. Williams

7 Stephen J. Hirschfeld
8 Donna M. Rutter
9 Kristen L. Williams

10 Attorneys for Defendants
11 MICHAEL P. MCGRATH; ALL RISKS,
12 LTD.
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CURIALE DELLAVERSON HIRSCHFELD & KRAEMER, LLP
ATTORNEYS AT LAW
SAN FRANCISCO

VERIFICATION FORM TO FOLLOW

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CURIALE DELLAYERSON HIRSCHFELD & KRAEMER, LLP
ATTORNEYS AT LAW
SAN FRANCISCO

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO**

3 I am a resident of the United States and a resident of the State of California, over the age
4 of eighteen years, and not a party to the within action. My business address is 727 Sansome
Street, San Francisco, California 94111. On February 13, 2008, I served the following
document(s) by the method indicated below:

5 **DEFENDANT ALL RISKS, LTD'S RESPONSE TO PLAINTIFF'S**
6 **CRUMP INSURANCE'S REQUEST FOR PRODUCTION OF**
7 **DOCUMENTS [F.R.C.P. 34]**

8 ☐ by transmitting via facsimile on this date from fax number (415) 834-0443 the
9 document(s) listed above to the fax number(s) set forth below. The transmission
10 was completed before 5:00 p.m. and was reported complete and without error.
11 Service by fax was made by agreement of the parties, confirmed in writing. The
12 transmitting fax machine complies with Cal. R.Ct 2003(3).

13 ☒ by placing the document(s) listed above in a sealed envelope(s) with postage
14 thereon fully prepaid, in the United States mail at San Francisco, California
15 addressed as set forth below. I am readily familiar with the firm's practice of
collection and processing correspondence for mailing. Under that practice it would
be deposited in the U.S. Postal Service on that same day with postage thereon fully
prepaid in the ordinary course of business. I am aware that on motion of the party
served, service is presumed invalid if postal cancellation date or postage meter date
is more than one day after date of deposit for mailing in affidavit.

16 ☐ by sending the documents electronically through email to the address listed below.

17 ☒ (FEDERAL) I declare under penalty of perjury that the foregoing is true and
18 correct, and that I am employed at the office of a member of the bar of this Court at
19 whose direction the service was made.

20 Douglas W. Stern
21 Fulbright & Jaworski, LLP
22 555 South Flower Street, 41st Floor
23 Los Angeles, CA 90071
Tel: (213) 892-9200
Fax: (213) 892-9494

24 I declare under penalty of perjury under the laws of the United States that the foregoing is
25 true and correct, and that I am employed by an officer of a member of the bar of this Court at
whose direction the service was made. Executed on February 13, 2008 at San Francisco,
California.

26 
27 Angelique Pierre
28

EXHIBIT D

DRILL *CLIENT* *FILE*

FULBRIGHT & JAWORSKI L.L.P.

A REGISTERED LIMITED LIABILITY PARTNERSHIP
555 SOUTH FLOWER STREET
FORTY-FIRST FLOOR
LOS ANGELES, CALIFORNIA 90071
WWW.FULBRIGHT.COM

OSTERN@FULBRIGHT.COM
DIRECT DIAL: (213) 892-9202

TELEPHONE: (213) 892-9200
FACSIMILE: (213) 892-9494

February 29, 2008

Donna M. Rutter, Esq.
Kristen L. Williams, Esq.
Curiale Dellaverson Hirschfeld & Kraemer
727 Sansome Street
San Francisco, CA 94111

RECEIVED MAR - 3 2008

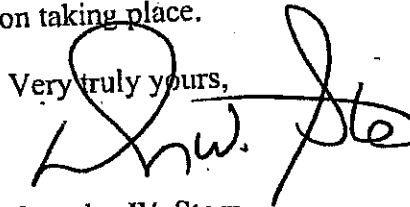
Re: Crump v. Michael P. McGrath and All Risks, Ltd.

MAR 03 2008

Dear Donna and Kristen:

Rather than write a detailed letter going through the responses provided by your clients to our document request, I think it would be more efficient to have a telephone call where we went through the various deficiencies. Also, I gather that your production of documents is being delayed until we have worked out the details on the protective order. Lastly, we think it very important to resolve the matter with respect to Michael McGrath's computer. It is our understanding that he transmitted Crump materials to a home computer. That computer is subject to our Request No. 1, and it is critical that we obtain access to that computer to ascertain whether McGrath has taken materials as we believe. I cannot stress enough the need to accomplish that prior to any meaningful mediation taking place.

Very truly yours,



Douglas W. Stern

cc: Andrew Forstenzer

EXHIBIT E

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

--oOo--

**CERTIFIED
TRANSCRIPT**

CRUMP INSURANCE SERVICES, INC.,)

Plaintiff,)

vs.)

No. C-07-4636 MMC)

MICHAEL P. MCGRATH, an)

individual, ALL RISKS, LTD., a)

corporation, and Does 1)

through 50, inclusive,)

Defendants.)

DEPOSITION OF RICK MCDONOUGH

DATE: June 20, 2008

TIME: 12:59 p.m.

LOCATION: Curiale Dellaverson Hirschfeld & Kraemer
727 Sansome Street
San Francisco, CA

REPORTED BY: Kenneth T. Brill

Registered Professional Reporter

Certified Shorthand Reporter No. 12797

Page 1 - 78

00031

1 MR. ASKANAS: Looks like agents and brokers.

2 BY MS. RUTTER:

3 Q. Okay. Take what you need in terms of looking
4 at just the contacts that are in there, and I want to
5 ask you, are there -- does that section identify
6 retailers?

7 A. Yes.

8 Q. And that provides contact information for
9 various retailers by geographic area, is that your
10 understanding?

11 MR. ASKANAS: I just want to object, the
12 document speaks for itself.

13 THE WITNESS: Rephrase your question.

14 BY MS. RUTTER:

15 Q. That that section refers to various retailers
16 by geographic area?

17 A. Yes.

18 Q. And is it fair to say that your primary role
19 as a broker is to work with retailers in order to do
20 placements for various types of insurance for the
21 retailers clients?

22 A. Correct.

23 Q. And to do your job, what information do you as
24 a broker need to have in order to attempt that
25 placement?

00032

1 A. We need to have a submission from the retail
2 broker.

3 Q. And is that in writing, Mr. McDonough?

4 A. Yes.

5 Q. And what information does the retailer provide
6 you in that submission?

7 A. An application. Loss information, financials.

8 Q. Does the submission also provide you the
9 expiration date of the insured's policy?

10 A. Not necessarily.

11 Q. Do you need an expiration date in order to do
12 your job to make a placement?

13 A. No.

14 Q. What else is provided by the retailer in that
15 submission, other than what you've already told me?

16 A. Website information.

17 Q. Is there information provided about the
18 underlying insured?

19 A. Underlying insured?

20 Q. In other words, the actual company or entity
21 that's being insured, that's the client of the retailer;
22 correct?

23 A. Correct.

24 Q. All right. So is information about who the
25 insured is, is that usually provided in a submission?

00033

1 A. Correct.

2 Q. All right. In any of the risks that the
3 insured is looking to have insured?

4 A. Correct.

5 Q. Any other information in that submission
6 provided by the retailer to you?

7 A. Information that's on the application.

8 Q. Such as what?

9 A. Effective date. Mailing address.

10 Q. And is there any other information that you
11 need in order for you to do your job and go out and find
12 a placement?

13 A. Once I have a complete submission, that's all
14 I need.

15 Q. Okay. And all that information, again, it
16 comes from the retailer; correct?

17 A. No.

18 Q. Oh, I'm sorry, I thought I understood you to
19 say that this was information that was provided on a
20 submission?

21 A. My -- to clarify the website, I may go to
22 their website and glean additional information to put my
23 submission together.

24 Q. Sure. Okay. Setting aside that, all the
25 information you need is provided on that submission by

00034

1 the retailer?

2 A. Correct. Correct.

3 Q. Has it been your experience that at times
4 retailers will send these submissions out to various
5 wholesale brokers?

6 A. Yes.

7 Q. In other words, trying to compete and get the
8 best deal?

9 A. Yes.

10 Q. Can you give me any estimate in terms of what
11 percentage of time that occurs?

12 MR. ASKANAS: Don't guess or speculate. If
13 you have an estimate, you can give it.

14 THE WITNESS: That would be a -- I don't know.

15 BY MS. RUTTER:

16 Q. Okay.

17 A. I have not been a retail broker, I do not know
18 what would be a fair assumption.

19 Q. I appreciate that. Are there certain -- in
20 your experience, are there certain retailers that tend
21 to bid wholesale brokers against each other?

22 A. Yes.

23 Q. And which retailers would those be?

24 A. Which -- rephrase the question.

25 Q. Sure. The question was are there certain

CERTIFICATE OF REPORTER

I, KENNETH T. BRILL, a Certified Shorthand Reporter, hereby certify that the witness in the foregoing deposition was by me duly sworn to tell the truth, the whole truth, and nothing but the truth in the within-entitled cause;

That said deposition was taken down in shorthand by me, a disinterested person, at the time and place therein stated, and that the testimony of the said witness was thereafter reduced to typewriting, by computer, under my direction and supervision;

I further certify that I am not of counsel or attorney for either or any of the parties to the said deposition, nor in any way interested in the event of this cause, and that I am not related to any of the parties hereto.

DATED: July 8, 2008.

A handwritten signature in cursive script, reading "Kenneth T. Brill", written over a horizontal line.

KENNETH T. BRILL, CSR No. 12797